



# Workers' Compensation Guidebook

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Western New York Council on Occupational Safety and Health

*This Guidebook is for informational purposes only, and does not constitute legal advice (or create an attorney-client relationship with WNYCOSH).*

## **What is Workers' Compensation?**

*The Workers Compensation System was established to compensate injured workers for medical treatment, lost wages, or death due to workplace injury or occupational disease. Employers are required to purchase workers' comp insurance for their employees. Comp coverage is available regardless of the "fault" of the worker or the employer.*

***Workers' Comp covers injuries and illnesses related to employment for all employees—including off-the-books, temporary, and undocumented workers.***

### **Workers' Comp does not cover:**

- Independent contractors. You are an independent contractor if you direct your own work, are free to provide similar services to other clients, work on an assignment or temporary basis, are responsible for independent business functions such as paying your business expenses, etc.
  - If your boss tells you when, where, and how to perform your duties you are an employee, even if you receive a 1099 and your employer says you are an independent contractor.
  - If you think you have been misclassified, call WNYCOSH for assistance, (716) 833-5416.
- Injuries where the injured worker intended to harm themselves or another worker.
- Injuries caused solely by the intoxication of the injured worker.



# What To Do If You Are Injured At Work

**There are three steps in a Workers' Comp Claim:**

- 1. Report your Injury to your Employer**
- 2. Get Medical Care**
- 3. File a Workers' Comp Claim**

## **Step 1: Report your injury in writing to your employer within 30 days of the accident**

- If possible, you should notify your employer before you leave work on the day of the incident.
- Fill out the accident report or write a letter to the employer YOURSELF if possible. Do not let your employer fill out a form for you to sign.
- You have 30 days to notify your employer in order to be eligible for Workers' Comp.

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## **Step 2: Get medical care**

*You should see a doctor as soon as possible after you are injured. You have the right to choose your own medical provider, as long as he or she is an authorized Workers' Comp provider.*

**To find an authorized provider:**

- Ask your regular doctor if he or she is an authorized provider.
- Visit an Occupational Health Clinic: [www.health.ny.gov/environmentalworkplace/clinic.htm](http://www.health.ny.gov/environmentalworkplace/clinic.htm).
- Western New York's Occupational Health Clinic is located at ECMC, (716) 898-5858.
- Search for a doctor in the Workers' Comp Database, at [www.wcb.ny.gov/health-care-provider-search/](http://www.wcb.ny.gov/health-care-provider-search/) You can search for language, location, specialty, among other factors. The search site is only available in English.
- You can call (877) 632-4996 for help finding an authorized provider. You can request a language interpreter when an agent comes on the line.

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## **Step 3: File a Workers' Comp claim using Form C-3**

*To be eligible for Workers' Comp, you MUST file Form C-3 within 2 years of your injury, or of realizing your illness is work-related.*

- Your answers on form C-3 are the basis of your claim, so be sure to answer them as accurately as possible.
- A lawyer or licensed representative can help you fill out Form C-3.
- Be sure to list all the jobs you are working at the time you are injured.

- For help filing your Form C-3, you can call the Advocate for Injured Workers at (877) 632-4996. You can request an interpreter when you call).
- You can call the WNYCOSH Worker Center Hotline for help filling out your C-3. (716) 206-3550 for language assistance in completing your C-3.



### File Form C-3 Online

You can file online at [www.wcb.ny.gov/onlineforms/c3/C3Form.html](http://www.wcb.ny.gov/onlineforms/c3/C3Form.html).



### File a paper Form C-3

You can download form C-3 and fill it out. Go to [www.wcb.ny.gov/content/main/forms/c3.pdf](http://www.wcb.ny.gov/content/main/forms/c3.pdf).



### Visit Any Workers' Comp Office

To obtain a paper copy of Form C-3 Buffalo's office is located at 295 Main St. Suite 400, Buffalo, NY 14203.

## Workers' Comp Benefits

- Workers' Comp provides medical coverage for injuries that occurred at work.
- It covers hearing loss and diseases you get because of the kind of work you do.
- It provides benefits to your family if you are killed while doing your job.
- It provides wage replacement if you are unable to work, or work at the same pay level as you did before.

## Occupational Hearing Loss

If you worked in a noisy workplace and suffered hearing loss you may be entitled to "loss of hearing award." There are a couple of things to consider:

1. You must be away from the noisy environment and have enough hearing loss to qualify. You'll need to have a hearing test and it can't be conducted until 90 days have passed since your last exposure to the loud workplace. This test must show minimum hearing loss and include a report from a doctor saying the loss was caused from exposure to noise in the workplace. The Workers' Comp Board will not process a claim without substantiating documentation.
2. You have 2 years and 3 months from when you leave your last noisy workplace to file a claim for hearing loss using the C-3 form.

## Occupational Disease

Sometimes your job can make you sick. The materials you work with, or the environment you work in can cause diseases including lung diseases or musculoskeletal problems like repetitive stress injuries. Sometimes these problems only appear over time. You have a right to medical treatment for occupational disease, just as for other injuries, and you must file a claim for occupational disease within 2 years of realizing your disease is connected to your employment.

Use Form C-3 to file your claim.

## Death Benefits

*Sometimes workers are killed due to unsafe working conditions.*

Workers' Comp death benefits include:

- Funeral Expenses up to \$10,000 in upstate New York.
- Up to 2/3 of your average weekly wage to your surviving spouse and children.

See the WNYCOSH Family Resource Guide in 14 languages for more information at [wnycosh.org/family](http://wnycosh.org/family).

## Wage Replacement (Lost Wages)

- If you miss more than 7 days of work due to your injury, Workers' Comp may pay some of your lost wages.
- If you are totally unable to work, you will receive **up to** 2/3 of your average weekly pay (based on income from all jobs you were working when you were injured).
- If you are partially disabled, or able to work with some modifications, you may need to show that you are working or looking for a job. This is called Labor Market Attachment.
- Your doctor will determine your level of disability.
- The employer's insurer may request that you see an Independent Medical Examiner (IME). You should attend an IME appointment if you are asked to do so.



Employers are not required to file a comp claim until they spend at least \$1,000 on an injury or illness. Even if your employer offers to pay for your medical expenses outside the Workers' Comp system, you can still file a claim with the Workers' Comp Board by submitting a C-3, in order to protect against any unexpected circumstances related to your injury or illness. **If you don't file a claim within two years you will lose the ability to have your claim covered in most cases.**



## Labor Market Attachment

Labor Market Attachment means looking for work or actively training for work.

- Active independent job search
- Actively use NYS DOL resources:
  - \* NYS DOL Re-employment services
  - \* One-Stop Career Centers
  - \* Other Job Service
- Actively participate in Adult Career and Continuing Educational Services-Vocational Rehabilitation (ACCESS-VR)
- Actively participate in a job training program
- Attend an accredited educational institution full-time

## Hold on to these Records:

- Keep notes of conversations with your employer, especially if you reported your injury orally
- Receipts for transportation to and from medical appointments
- Pay stubs from any and all jobs you worked at the time of your injury
- Any letters from the Workers' Compensation Board.



## **What happens after I file my claim?**

**You employer may accept your claim.**

**Your employer may dispute your claim.**

**Your employer may offer to settle your claim.**

### ***If your employer accepts your claim:***

- Your employer's insurer will begin paying for your medical costs and lost wages after confirming your average weekly wage.

### ***If your employer offers to settle your claim (Section 32 Waivers):***

- A settlement is one-time, lump-sum payment in place of ongoing medical and wage benefits.
- You should discuss your need for future medical care with your doctor before accepting a settlement.
- You should consult with a lawyer or licensed representative before accepting a settlement.

### ***If your employer disputes your claim:***

- A Workers' Compensation Law Judge will hold a hearing and decide if you are eligible, and the amount of your award, if you are eligible.
- You should attend the hearing, and provide all documents requested.
- If your claim is denied, you have a right to appeal the decision.
- Your employer can also appeal a judge's decision.

### **Reasons Claims are Disputed:**

- Your employer may say your injury or illness occurred from before you worked for them.
- Your employer may say you are not an employee (they might say you are an independent contractor).
- Your employer may say the injury did not happen "in the course of employment." i.e. that the injury or illness occurred outside of work.



## You have the right to language interpretation and translation

- When you are calling the Workers' Compensation Board, you can ask for an interpreter when an agent comes on the line.
- When you are looking for an authorized medical provider, you can search for doctors who have interpreters in your language at [www.wcb.ny.gov/health-care-provider-search/](http://www.wcb.ny.gov/health-care-provider-search/). The search site is only available in English.
- If you feel you haven't received adequate interpretation services or were denied services, you can file a complaint <http://www.wcb.ny.gov/content/main/forms/lac1.pdf>

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## You have the right to legal representation

You have a right to an attorney or licensed representative to help you in this process. You should not pay the attorney or licensed representative directly. If you receive a Workers' Comp award, the attorney's fees will come out of your award.

Call (800) 342-3661 or go to the New York Bar Association referral service, [www.findalawyernys.org](http://www.findalawyernys.org), to find a Workers' Comp attorney near you.

## Your employer can not fire you or retaliate against you for filing a Workers' Comp claim.

WNYCOSH can help you if you have problems with the Workers' Comp process.

**WNYCOSH Worker Center Hotline (716) 206-3550**



# WNYCOSH Worker Center



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Delivering Results for Injured Workers

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Worker Center Hotline (716) 206-3550

[wnycosh.org/comp](http://wnycosh.org/comp)