

THE DOMINGUEZ FIRM^{LLP}



Injury Lawyers

WORK INJURIES

BENEFITS YOU DESERVE



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INTRODUCTION

BENEFITS YOU DESERVE

When you or a loved one is injured, killed, or becomes ill as a result of your job, the Workers' Compensation (WC) system is supposed to be there to help you return to health, pay for your bills, and provide disability payments. Sounds great, right? In theory, yes. But, there's a catch.

For starters, the WC system can be overwhelming and confusing, not to mention difficult to navigate. It is also full of unfamiliar terms, acronyms, and legal jargon that sounds like its own language at times. To some, it might seem the WC system is designed to prevent injured or ill employees from getting the benefits they are entitled to.

Secondly, and perhaps more importantly, in many WC cases, the process becomes quite adversarial as you must fight your employer's insurance company for the medical treatment and benefits you are owed. Trust us, no insurance company is looking to pay for treatment and disability benefits they can avoid, which means you have to fight for the rights and justice you deserve.

For these reasons and others, it is critical that you have experienced legal representation on your side; a team who knows the WC system inside and out, that can help you maximize the benefits the law provides, and that can fight back against insurance companies.

This resource guide will inform you about the laws, your rights, and your legal remedies.

Your hard work makes your employer money, so you need to make sure you are taken care of if the unthinkable happens and you or a loved one is injured, made ill, or dies as a result of a workplace accident or condition. The following provides an overview and explanation of the the WC system and its various components.



KEY STATISTICS

WORKPLACE INJURIES AND ILLNESSES

- ▶ **Death**
- ▶ **Traumatic brain injury**
- ▶ **Cancer**
- ▶ **Catastrophic injury**
- ▶ **Neurological and nerve damage**
- ▶ **Spinal cord injuries, including partial, full, temporary, and/or permanent paralysis**
- ▶ **Loss of limb (amputation)**
- ▶ **Fractures and broken bones**
- ▶ **Organ and internal damage**
- ▶ **Torn ligaments and tendons**
- ▶ **Electrocutions and burns**
- ▶ **Deformation, major scarring, and loss of muscular use**
- ▶ **Loss of sight**
- ▶ **Loss of hearing**
- ▶ **Asthma**
- ▶ **Repetitive-use injuries (such as carpal tunnel and shoulder wear-and-tear injuries)**
- ▶ **Mental illness, such as depression, anxiety, and stress-related illness**

MOST DANGEROUS JOBS IN CALIFORNIA

- ▶ Construction
- ▶ Agricultural
- ▶ Logging
- ▶ Commercial trucking
- ▶ Factory work
- ▶ Airplane pilots
- ▶ Taxi cab drivers
- ▶ Transportation

Working can be one of the most dangerous things we do, as these alarming statistics show...

5,000 worker fatalities in the U.S. in 2016.

1/5 of work-related fatalities were suffered by foreign-born workers.

2,083 deaths were caused by worker-transportation incidents.

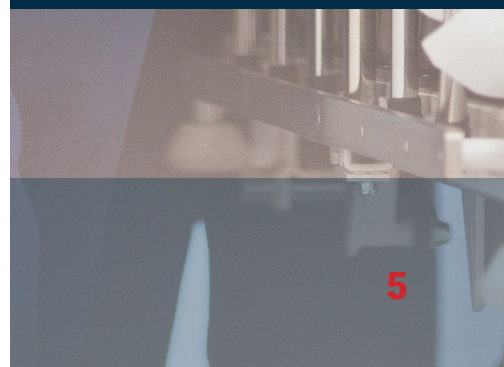
892,270 workers missed an average of 8 days of work due to workplace injuries in 2016.

376 worker fatalities occurred in California in 2016.

Sources: OSHA, Bureau of Labor Statistics, Department of Industrial Relations, NES Global



In 2016, an average of **3.7 out of 100 workers** in California were reported as injured, ill, or killed due to a work-related incident.



WHAT TO DO AFTER A WORK PLACE INJURY OR ILLNESS

If you or a loved one has been injured, killed, or fallen ill from a work-related accident or workplace condition, it's important to follow these tips to ensure your WC case starts out on the right foot:

- 1. DEMAND IMMEDIATE MEDICAL TREATMENT.**
- 2. REPORT THE INJURY, DEATH, OR ILLNESS TO YOUR (OR YOUR LOVED ONE'S) EMPLOYER IMMEDIATELY.**
- 3. FILE YOUR FORMAL WC CLAIM (FORM DWC-1) QUICKLY.**
- 4. KEEP RECORDS OF ALL COMMUNICATIONS WITH YOUR EMPLOYER REGARDING YOUR INJURY OR ILLNESS.**
- 5. ENLIST THE HELP OF THE DOMINGUEZ FIRM. WE KNOW WC INSIDE AND OUT AND WILL ASSIST YOU WITH ALL OF THE ABOVE.**



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As is the case with all injuries and illnesses, the most important thing is your health. While it's difficult to think of it at the time, it's important to keep in mind that your WC case and related legal matters will allow you to get the care you deserve if you follow the above steps. Once a top-rated WC attorney is involved, you can then focus on your health and let your workers' compensation lawyers take care of your case and all of the details associated with it.



OVERVIEW OF THE WORKERS' COMPENSATION SYSTEM

PURPOSE

The California Labor Code and the California Code of Regulations, Title 8, govern WC. Under California law, all employers with one or more employees must carry WC insurance to cover workplace injuries and illness. WC is a safety net that is supposed to help injured or sick employees recover and return to work and to make sure they are taken care of in the event they cannot return to work. WC works a lot like regular health and disability insurance in which employers pay into an insurance fund and then the benefits are administered through a controlled system of checks and balances that are overseen by California's Division of Workers' Compensation (DWC).

"NO FAULT" SYSTEM

WC is a "no fault" system, which means that it does not matter if you caused your own injury or illness. Keep in mind, however, that just because WC is a "no fault" system, this will not prevent your employer and its insurance company from trying to avoid paying out the benefits you deserve.

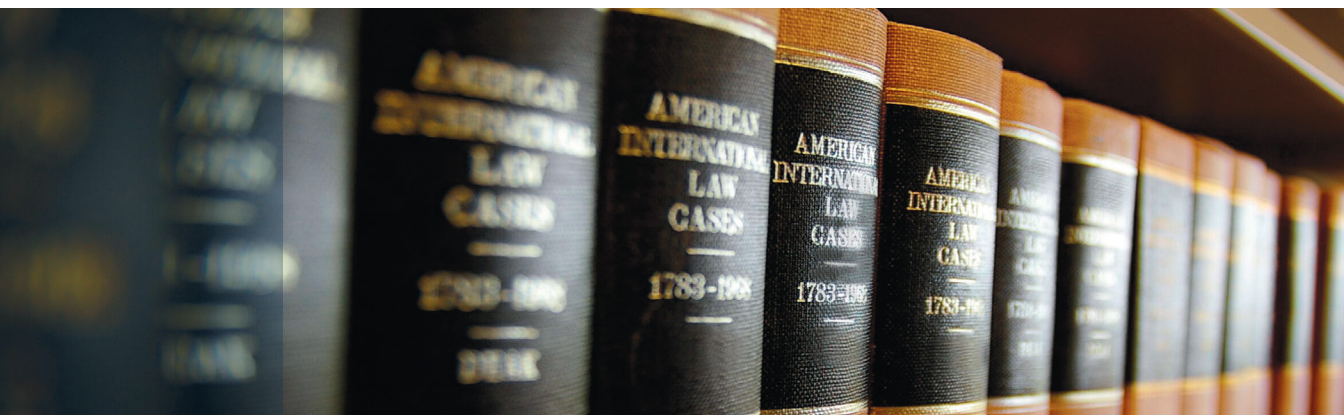
ELIGIBILITY

WC extends to all "employees," including undocumented employees. It can also extend to "independent contractors" if it is determined that the person in question was indeed an "employee" as defined by law after an analysis of factors proscribed by courts. These subtleties highlight the importance of hiring an experienced WC attorney.

IMPORTANT TERMINOLOGY

- ▶ **APPLICANT**
the employee or dependent (you) making the WC claim
- ▶ **APPLICANT'S ATTORNEY**
a workers' compensation attorney that can represent you
- ▶ **DEFENDANT**
your employer or its insurance company that opposes you in a dispute over benefits or services
- ▶ **AGREED MEDICAL EXAMINER (AME)**
the doctor your attorney and the insurance company agree upon to conduct a medical examination of you to help in resolving your claim
- ▶ **AOE/COE**
arising out of and occurring in the course of employment
- ▶ **DISABILITY**
a physical or mental impairment that limits your life activities, including work
- ▶ **MEDICAL PROVIDER NETWORK (MPN)**
an entity or group of health care providers set up by the WC insurance and approved by the state to treat injured or sick workers
- ▶ **PERMANENT AND STATIONARY (P&S)**
when your medical condition has plateaued and reached maximum improvement
- ▶ **PERMANENT DISABILITY RATING (PDR)**
a percentage up to 100 that estimates how much your job injury limits the kind of work you can do
- ▶ **THIRD-PARTY**
this is a person that does not work for your employer or an entity, business, or company other than your employer

The WC system is complex, but its unique terms and language make it even more difficult to grasp. Above are sampling of a few key terms and phrases to help you (note: this is not an exhaustive list and you will see other terms used and defined throughout this guide). There are dozens of other WC terms, which an experienced WC attorney can readily explain to you as they arise during the pendency of your case.





EXCLUSIVE REMEDY

WC is an employee's "exclusive remedy" for a workplace injury, death, or illness, which means that in exchange for providing WC insurance and coverage, employees are not allowed to file a civil lawsuit (with certain exceptions highlighted below) against their employer for any injuries, death, or illnesses that arise out of the employment.

WC VS CIVIL COURT SYSTEM

The WC system and the civil court system are two completely separate systems. However, you are permitted to sue third-parties, and even your employer directly, in certain circumstances in civil court at the same time your WC case is ongoing (see below for more details).

In civil court, people often think of "winning" or "losing" their case as the plaintiff having to prove liability against at-fault parties. In WC, because it is a no-fault system, this component does not exist. Instead, WC focuses on your injuries or illness, and your ability to work. The battle in the WC arena is between you, the applicant who needs benefits, and the defendant insurance company that often wants to limit your benefits.

WC has its own "court" called the Workers' Compensation Appeals Board (WCAB) where WC judges and "administrative law judges" (ALJ) make decisions about disputes that arise out of your WC case. Disputes can vary, but they typically focus on medical treatment decisions and disability ratings. ALJs also approve the settlement at the end of a case. If necessary, ALJs decisions are reviewed by the Reconsideration Unit of the WCAB.

EMPLOYMENT REPERCUSSION

It is against the law for employers to punish or terminate you for filing a WC claim. Unfortunately, bad-acting employers may retaliate or discriminate against you for reporting an injury or illness as well as for filing a WC claim. This is known as a Labor Code 132a violation and opens the door for you to make an additional claim against your employer for retaliation and/or discrimination. An employer must hold your job or an equivalent position for you to return to and also must engage in a process to reasonably accommodate you if possible if your injuries or illnesses preclude you from returning to the same or similar position you left.

IMPORTANT DEADLINES

Your WC claim begins...

- ▶ The date of your injury (if it arises from an accident); OR
- ▶ The date when you first missed work or saw a doctor for the injury or illness and you knew or should have known your injury or illness was caused by your work

Deadlines to look out for...

- ▶ You must inform your employer of the injury or illness within 30 days; and
- ▶ You must file a formal WC claim (form DWC-1) with the WCAB within one (1) year

Adhering to these deadlines is essential. Failure to do so can result in the denial of your claim, which could prohibit you from getting treatment and benefits. These deadlines, in addition to all of the other strict rules of the WC system, illustrate why having a skillful WC lawyer in your corner is critical to your health and success within the WC system.



TYPES OF WC BENEFITS

► HEALTHCARE

access to medical care throughout the entirety of your WC case (and sometimes beyond)

► TEMPORARY TOTAL DISABILITY

up to two-thirds of your weekly income, subject to maximums and minimums, for the duration you are treating and recovering from your injury or illness up to a max of 104 weeks (2 years)

► PERMANENT DISABILITY

if a doctor evaluates you and determines that you will be a certain percent disabled and unable to perform certain (or all) job functions, then you are entitled to payments equal to two-thirds your weekly average with maximums and minimums

► DEATH BENEFITS

this is a payment to spouse, children, and/or dependents upon the death of the employee, the amount of which is based on several factors and a formula

► SUPPLEMENTAL JOB DISPLACEMENT BENEFITS

this pays for retraining and re-education so you can transition into a job you are able to perform if you have a disability that keeps you from returning to your old job or transitioning to a new position at your current employer

An extremely important thing you can do to ensure you get the benefits you deserve is to follow your doctors' orders and communicate with your medical team throughout the entire process. This means telling your doctor when there is a change in your health or condition and adhering to the restrictions that are put in place. The same goes for your WC lawyer. Clear and timely communication is key so that everyone is on the same page as it relates to your case and your health.

HOW LONG WILL YOUR WC CASE LAST?

Once you have initiated your claim, you will have access to approved medical providers that will evaluate you, diagnose you, determine a treatment plan, and then treat you accordingly. Treatment can be delayed, however, if your employer's WC insurer disputes the diagnosis and/or the treatment recommendations.

Also, if you are unable to work as a result of your injury or illness, you will be assessed so you can receive temporary disability payments that can convert to permanent disability payments if your injury or illness results in a long term or permanent disability rating. Again, this process can be delayed if your employer's WC insurer disputes the findings and ratings.

In terms of the total length of your case, the rule of thumb is that the severity of your injury or illness will usually dictate how long your

case lasts. Straightforward injuries, such as a small fracture, might mean your case is relatively short-lived (a few months up to a year). More complex injuries can take one or more years to heal or to become permanent and stationary (P&S). In cases with more complex injuries, especially brain and spinal cord injuries, your WC case could take several years to resolve.

Ultimately, no matter the time frame, the end of your case typically occurs when you have been cleared to return to work (with or without limitations) and/or have been given a disability rating (up to 100 percent disabled) after being deemed to be in a "permanent and stationary" capacity. Much like a civil lawsuit, your WC case finalizes either by settlement or by trial in which your monetary award will be based on your medical needs and ability (or inability) to work. (See next section for more details.)

WHAT IF A THIRD-PARTY IS AT FAULT?

If a third-party person or entity causes or at least partially causes your on-the-job injuries or illness, you can sue the third-party directly in civil court while your WC claim is ongoing. The civil component of your case is known as a “crossover” or “third-party crossover” case. To win a third-party crossover case, you must prove liability as well as your damages in a civil case. It is important to know that in most crossover cases, your employer’s WC insurance carrier will seek indemnification from the third-party to reimburse it for its payments on benefits and related costs.

Common Third-Party Crossover Cases

- ▶ On multiple-employer worksites, such as construction sites, where several different sub-contractors are working at the same time
- ▶ Vehicular accidents in which a third-party vehicle is involved
- ▶ Unsafe condition of a third-party’s property that causes harm
- ▶ Products liability in which a defective product causes you injury





Economic Damages (past & future)

- ▶ Medical costs
- ▶ Lost earnings
- ▶ Lost earning capacity
- ▶ Property damage and loss of use of vehicle
- ▶ Out of pocket expenses, including medical insurance co-pays
- ▶ Lost tuition
- ▶ Retraining
- ▶ Any other expenses or lost opportunities you've incurred as a result of your accident

Non-Economic Damages (past & future)

- ▶ Pain and suffering
- ▶ Emotional distress
- ▶ Loss of enjoyment of life
- ▶ Wrongful death (loss of support, loss of companionship, loss of love, and many others)
- ▶ Loss of consortium (for the spouse of the injured victim)
- ▶ Any other non-economic loss that you've suffered as a result of your accident

Third-party crossover cases may entitle you to monetary compensation, called “damages,” that can include those listed above. Crossover cases require extensive knowledge of the civil and WC legal systems, the financial resources to go toe-to-toe with big insurance companies, and the expertise of highly skilled personal injury lawyers that can take your case all the way through a civil trial to verdict.

EXCEPTIONS TO WC EXCLUSIVITY: SUING YOUR EMPLOYER DIRECTLY

If you are injured on the job, as stated above, WC is your exclusive remedy, which means you are not allowed to directly sue your employer in civil court. There are a few exceptions, however, that allow you to file a lawsuit in the civil court legal system against your employer. These exceptions, listed below, may be fact specific and may take in-depth investigation and analysis to prove.

Exceptions to WC Exclusivity

- ▶ **Employer assaults you or ratification of the conduct of another employee who assaulted you**
- ▶ **Employers that remove or fail to install the guard on a power press**
- ▶ **Dual capacity – if you work for your employer outside of your normal work duties**
- ▶ **Employers that fraudulently conceal your injury or its cause (such as with asbestos)**
- ▶ **Employers who failed to obtain WC insurance**

SERIOUS AND WILLFUL MISCONDUCT, INVESTIGATIONS, AND OSHA

In some instances, an employer's conduct is so egregious and committed in blatant disregard for the rules, regulations, and customs of the industry, as well as the safety of employees, that they are considered by OSHA to be "serious and willful" violations. This type of behavior, which is done in reckless disregard for safety and which can or does result in serious injury or death, usually garners severe penalties.

In California, the Occupational Safety and Health Administration (Cal-OSHA) oversees workplace safety and compliance. It is the governmental agency that conducts investigations after a serious injury, illness, or death has been reported. Its skilled investigators often conduct interviews, analyze evidence, and make findings in a report that can result in citations for violations. (Note: if you are represented by an attorney, do not give an interview without your attorney present.)

While OSHA's reports are extremely useful for our analysis, it is our practice to conduct our own witness interviews and investigations to determine what occurred, whether a serious and willful violation has taken place, and if a third-party is to blame for all or part of the incident.



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KNOW YOUR OPPONENT

While you hope that your employer and its WC insurance carrier have your best interests at heart, the fact of the matter is that you usually have to fight to make sure you receive all benefits owed to you.

Unfortunately, a few bad apples who try to manipulate or defraud the WC system have fueled employers and their WC insurance companies to essentially assume that everyone is a bad apple. They tend to approach injuries, illnesses, and deaths with a heavy dose of skepticism and make you, the legitimately injured or ill employee, jump through hoops and over obstacles before they pay out benefits.

Once you file your WC claim, you may encounter all sorts of denials, defenses, and arguments that are made in an effort to end or minimize your WC claim. It's unfortunate that in a "no fault" system, some WC insurance companies want to find any reason to deny or minimize your benefits. Being aware of these opposition tactics is important so you do not fall trap to them.

Tactics Used By The Defense

- ▶ **Missed deadlines and statute of limitations**
- ▶ **Improperly filling out forms**
- ▶ **Arguments that you were an independent contractor, not an employee**
- ▶ **Your injury or illness was not a result from your work**
- ▶ **Your injuries or illnesses are not as severe as you make them out to be**
- ▶ **Arguments that you could or should be able to return to work sooner than you actually can**
- ▶ **Denials or delays relating to medical treatment and access to care**
- ▶ **Denials or delays relating to disability benefits**
- ▶ **Claiming you engaged in fraud of the system**
- ▶ **"Sub rosa" video in which private investigators are enlisted to secretly videotape or photograph you, hoping you will do something that is contrary to doctors' orders or that is inconsistent with your injury and diagnosis**

THE END OF YOUR WORKERS' COMPENSATION CASE

After your injury or illness has healed, or once you become permanent and stationary, your WC case will typically close out in one of two ways resulting in a lump sum payment to you...

1.) Settlement

A negotiated outcome that results in a stipulated agreement or a compromise and release.

2.) Trial

Evidence is presented at a hearing and a judge determines the outcome.

The amount of your lump sum payment relates directly to the severity of your injury or illness, your anticipated future medical needs, if any, and your ability to work (and to what extent). This varies with every individual and case, and therefore must be carefully considered by your medical team, occupational experts, and WC attorneys.

CONCLUSION

The WC system provides meaningful benefits. Remember these key takeaways in the list below to ensure you receive the benefits you are entitled to. WC cases are complex and become even more so if a third-party is at fault or partially at fault, if your employer can be directly sued, or if your employer retaliates against you. Having someone in your corner that understands how to efficiently navigate the WC system, and potential related civil cases, while being able to thwart any attacks, can be the difference-maker in securing the benefits and future you deserve. For over 30 years, The Dominguez Firm has won thousands of workers' compensation and third-party injury cases and will fight for you on a no-recovery, no-fee basis.



Key Takeaways

- ▶ **Report your injury, illness, or death of a loved one to the employer immediately**
- ▶ **File your form DWC-1 within one year after the triggering date of your injury or illness**
- ▶ **Promptly enlist the services of an aggressive, experienced, workers' compensation attorney**
- ▶ **Follow all doctors' orders and restrictions**
- ▶ **Go to all of your medical appointments**
- ▶ **Communicate with your medical team and attorney**
- ▶ **Be aware of the common defenses and denials**
- ▶ **Be patient with the process, focus on healing, and let your attorney take care of the rest**
- ▶ **No one is going to hand you benefits; we will advocate and fight for them**

Making a false or fraudulent workers' compensation claim is a felony subject to 5 years in prison or a fine up to \$50,000 or double the value for the fraud, whichever is greater, or by both imprisonment and fine.

ABOUT THE AUTHOR



J.J. Dominguez, the founder, CEO and Managing Partner of The Dominguez Firm, LLP (TDF) has dedicated his life's work to enforcing the rights of injured workers, fighting for the individual, and leveling the playing field. TDF is founded on three core ideals: compassion, service, and results that translate to personal, friendly, and custom service for each client.

For his efforts inside and outside of the courtroom, Dominguez has been honored with many awards and accolades. In 2011, CAOC nominated Mr. Dominguez for its Attorney of the Year Award. In 2013, The Hispanic National Bar Association named Mr. Dominguez its Attorney of the Year.

In 2015, the *Los Angeles Business Journal* awarded him its Latino Business Award for setting the example of excellence. In 2020, Super Lawyers selected Mr. Dominguez to its esteemed Southern California Super Lawyers list for the 11th time. Only 5 percent of attorneys are selected to the Super Lawyers list after a stringent multi-phase selection process.

TDF is one of the most widely recognized and successful injury law firms in Southern California. Attorneys at TDF have an accumulated and proud record of over \$750 million dollars in recovery for injured clients.

If you or a loved one has been injured as a result of a work-related accident, please do not hesitate to call us at 800-818-1818 for a free, confidential consultation with one of our experienced workers' compensation attorneys. There is no obligation, and if there is no recovery, there is no fee.

The Dominguez Firm is here to help.

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