

Workers' Compensation

What is workers' compensation? Workers' compensation is a state-regulated insurance program that provides medical and income benefits to workers for *work-related injury or illness*, regardless of who is at fault. It includes occupational illnesses (for example, a chronic lung condition caused by breathing in hazardous chemicals at work); trauma injuries caused by repetitive tasks or awkward positions while working (for example, a back injury caused by lifting of heavy objects). If you are killed on the job, worker's compensation pays death and burial benefits. Workers compensation only covers injuries sustained while working. Workplace injuries that are self-inflicted, injuries resulting from worker intoxication, or injuries caused by worker horseplay or unsafe practices are not covered. Workers are also expected to use safety equipment provided by the employer.

Are all employers required to carry Workers' Compensation Insurance? No. Private employers in Texas do not have to carry workers compensation insurance Those who do must inform employees and post a workplace notice with the name of the insurance carrier. If you are not sure about employer coverage, call the Texas Department of Insurance-Workers' Compensation at 1.800.372.7713.

Can I sue my employer for workplace injuries? If covered by workers' compensation, you *cannot* sue your employer for work-related injuries or illness. There are some exceptions – if injured while operating a punch-press, while working on a boat or ship, or you are ill from asbestos exposure, you may be able to sue even if your employer subscribes to workers' compensation. If a third party is also at fault, you can sue the third party.

What if my employer does not carry workers compensation insurance? Some employers don't subscribe to workers compensation and choose private occupational injury benefit plans instead. These plans are loosely governed by a federal law known as ERISA. If the plan is in effect you should have received information about it at the start of your employment, along with the rules for workers to give notice of their injury (usually within 24 hours) the appeals process (varies depending on the carrier) and access to medical care (usually restricted to a few doctors in the network).

How do I file a claim for workers' compensation? If you've been injured at work AND your employer is covered by workers compensation insurance:

- Report your injury to your employer within **30 days** from the date of the injury or the date you discovered your injury or illness was job-related., otherwise you might lose your right to benefits.
- Send a completed claim form (DWC Form-041) to the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) within **one (1) year** of the date of injury or date you learned of an illness related to your occupation The form and instructions are at www.tdi.texas.gov/forms/dwc/dwc041firstprt.pdf, or call TDI-DWC at 800.252.7031.

Who can help me with my claim? The Office of Injured Employee Counsel (OIEC) can help with the initial claim process. Call 1.866.393.6432 or go to www.oiec.texas.gov/resources. You have *the right to hire an attorney* to help you at any stage of the workers' compensation process, including the benefit review conference, contested case hearing, appeals panel review and judicial review.

Can I appeal a final decision denying my claim? Yes. Appeal the final decision to the district or county court in the county where you live by filing a petition no later than **45 days** from the date you receive the final decision. The OEIC cannot help with your appeal to the state courts; consult an attorney or legal aid.

Can I get fired for making a claim? It is against the law for an employer to retaliate against you for filing a claim. If you think you are being punished for making a claim, you might have a legal action against your employer. Consult an attorney to evaluate your legal options.