

Injured while working for PACE?

Illinois Workers' Compensation: Your Legal Rights & Responsibilities

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ILLINOIS WORKERS' COMPENSATION

INTRODUCTION

This Handbook was prepared to make sure Amalgamated Transit Union Local 241 members and their families get all the benefits and protections the law provides.

In preparing the Handbook we adopted a question and answer format so you can find answers to common questions easily. This handbook is a guide and should not be considered definite legal advice.

If after reading this Handbook you still have remaining questions or problems, you can contact your Executive Board Member or an officer of the Union immediately: You can also contact the Union's attorneys or workers' compensation lawyers for a free legal consultation:

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1. What injuries or diseases are covered?

Most job-related injuries or diseases are covered by the Illinois' Workers' Compensation Act or Occupational Disease Act.

- An employee is usually entitled to benefits even if the accident was preventable, or was the employee's fault. On the flip side, however, the law does not provide extra benefits if the accident was PACE's fault.

2. What should I do if I am injured on the job?

You have a lot to lose, so it is better to be safe than sorry. Even if your injury does not at first appear to be serious, always report every injury immediately to your supervisor or manager.

- The most common legal flaw in otherwise valid workers' compensation claims is the failure to report an accident promptly. ALWAYS fill out an incident or an accident report.
- Play it safe. Report all your injuries at once. Delayed reporting of accidents can result in discipline, denial of needed medical care and unpaid lost time.
- Always tell every nurse or doctor you see that an accident on the job caused your medical symptoms or problems. Tell them exactly what you wrote on the accident report or told your supervisor or manager when you reported the accident. Keep your facts straight. Be specific.
- It is best to report your injuries within three days, and especially before taking any time off. A delay of more than 45 days can result in a complete loss of all benefits forever. Try and be certain your supervisor or manager does the correct paperwork.
- Write down and keep the full names, permanent addresses and phone numbers of all witnesses.

3. What if PACE says my injuries were preventable?

A finding by PACE that your accident was preventable has no effect whatsoever on your workers' compensation rights under state law.

- A preventable finding may or may not have other effects on the job depending on the specific terms of your union contract.
- If you believe you might have a problem with PACE, you have an absolute right to union representation during any phase of an accident investigation -- but you have to ask for it.

- It is against the law for PACE to harass, discharge, or refuse to rehire or in any way discriminate against an employee because they exercise their rights under the Workers' Compensation or Occupational Disease Acts.

4. What if PACE's rules and Workers' Compensation laws conflict?

State law controls: no exceptions. However, (in some instances) if the PACE benefit is better than state law, you should use it. There are many relevant state rules and regulations that can be applied to remedy or address this kind of problem. Call your Union or meet with a lawyer at once.

5. What benefits are available under Workers' Compensation laws?

If you are eligible for workers' compensation benefits under the law you are entitled to receive:

- All necessary medical, first aid and hospital care for the injury at no cost to you;
- Disability pay equal to two-thirds of your average wage at the time of the accident, tax free; and
- An award or settlement to compensate for the permanent disability or permanent lost earning capacity you sustain as a result of the injury. Vocational training may also be available depending on the disability.

6. Do I need a lawyer? Do I have to use the lawyer my union sent me to?

The law does not require you to have a lawyer in order to file a claim with the Industrial Commission.

- You are free to hire any lawyer you want. Find out why your union recommends the lawyers it does.
- It's far better to have a lawyer you don't need than to need one you don't have. Many lawyers refuse to jump in during the late innings of a case, after PACE has it all tangled up and tied in knots.
- Make the lawyer decision early. Fees are fixed by law at 20% of what you receive, plus expenses. They are typically paid at the end of your case, so you pay nothing out-of-pocket.

7. Can I select my own doctor or hospital?

ABSOLUTELY! Not only can you, but you should.

- An injured worker may select his or her own doctor, surgeon or hospital at PACE's expense. (Actually you have a choice of two and referrals do not count!)
- PACE cannot refuse to pay for your medical treatment simply because it did not choose the provider or approve it in advance.

- The Workers' Compensation Act requires PACE to pay all necessary first-aid, medical, surgical, pharmacy, and hospital services necessary to cure or relieve the effects of the accident.
- There are no deductibles or co-pays in Workers' Compensation.
- Always seek treatment for your injury from your own doctor first. Your doctor's primary concern will be taking care of you.
- PACE's doctor is usually only concerned with getting you back to work [whether you're ready or not] and stopping compensation. This includes any specialist or hospital to which PACE's doctors may refer you. Entrust your care to PACE doctor at your own risk. It's like hiring a fox to watch the chicken coop!
- Always tell every nurse or doctor you see that an accident on the job caused your medical symptoms or problems. Tell them exactly what you wrote on the accident report or told your supervisor or manager when you reported the accident. Keep your facts straight. Be specific.
- The Worker's Compensation Act allows injured workers to obtain a second medical opinion at PACE's expense. This second opinion does not include other doctors or specialists your treating doctor refers you to: these providers are considered part of your "first opinion."
- Take all your injury-related medical bills straight to your employer.

8. If PACE won't pay my medical bills, can my doctor sue me to collect?

No. Thanks to an amendment in the Act doctors and hospitals cannot file a collection action against an injured worker if:

- a case is on file;
- they are routinely informed of the status of the workers' compensation claim.

This is a huge relief for injured workers in need of medical care where an employer won't pay without a trial.

If your workers' compensation claim is contested, ask PACE for a "denial letter" so your regular insurance will pay for your care until the claim gets sorted out. Be sure to tell your regular insurance that the bills are work-related, but that the claim is denied and disputed.

9. What wage benefits should I receive while I am unable to work?

Temporary Total Disability, known as "TTD", is compensation paid to an employee who is unable to work because of an injury that he or she has sustained on the job. TTD is payable after an Employee has been off the job for three (3) days.

- You are entitled to TTD payments for the entire period of time (excluding the first three days) that you are disabled and off the job. Once you are continuously disabled for fourteen (14) days, however, you are entitled to payments back to the first day you were off work.
- The amount of TTD payments you are entitled to is based upon your average weekly wage, not your rate of pay on the date you were injured. As a general rule, the weekly earnings in the 52 weeks prior to the injury is the average. An injured employee is entitled to two-thirds (2/3) of his or her average weekly income in the form of TTD payments.
- There is no limitation on the amount of time that you can collect TTD payments, provided all your lost time is excused by a doctor.

10. Can PACE force me to see its doctor?

Yes. If you claim you are entitled to Workers' Compensation, PACE can compel you to attend an examination by a doctor of its choice.

- Try not to sign any documents or forms while waiting for the PACE doctor.
- PACE cannot force you to let their doctor treat you. Exams only.
- To keep your claim valid, you must cooperate and allow the PACE doctor to examine you provided it is scheduled at a reasonable time and place.
- PACE must pay you mileage to and from, plus meals and lost wages. Of course PACE must pay the doctor as well.
- Beware: If you refuse to be examined by PACE's doctor your medical and wage loss benefits will stop.

11. Can PACE or PACE'S doctors talk to my doctor behind my back?

No one can ever talk to your doctor about your medical care, even medical care involving your work injury or workers' compensation case, without your permission. The doctor will try and force them to go through you or your lawyer for all medical information

- Just because you get hurt at work doesn't mean you surrender your legal right to private and confidential medical treatment.
- PACE **can** get copies of your medical records, but you must be careful to limit PACE's access to records dealing with your injury only. They do not have a right to see everything. Thus, read any record release which the PACE doctor asks you to sign very carefully, or take it with you and show it to your lawyer before you sign anything.

12. What do I have to sign?

There is no way around it: this is a tricky question.

- If PACE requires you to fill out an accident or incident report, fill it out as accurately as possible and sign it.
- Safe Rule: Always request time to show any documents you do not clearly understand to your Union or your lawyer before you sign them. “I’m not refusing to sign. I’m refusing to sign right now. I want to take this home and read it carefully.”

13. What if my earnings are reduced because of my injury when I return to work, or I am offered “light duty” work?

If your injury makes it medically impossible for you to ever work again in your usual or customary job, you are entitled to lifetime benefits called “Wage Loss Compensation.” The amount of compensation you are entitled to receive for wage loss is equal to:

- Two-thirds ($\frac{2}{3}$) of the DIFFERENCE between what you would be earning if you were back at your old job and the amount you are actually able to earn after the accident, tax free, for the duration of your disability.

“Light duty” is a tricky and dangerous area of the law, and most workers with “light duty” disputes need to consult a lawyer immediately.

- Under certain circumstances PACE can demand that you return to work “light duty” – even if your own doctor thinks you should stay off work. Consult with your attorney if this happens.
- If YOUR doctor releases you for light duty, but PACE has no such work available, it must keep paying you TTD benefits.

14. Can I get a recovery if I go back to work full duty/no restrictions?

Yes, after you are all done healing and ready to go back to work, compensation is payable for the permanent physical effects of the injury. Thus compensation is payable in two ways:

- Through an award of the Industrial Commission signed by an arbitrator after a full evidentiary hearing, or;
- Through a negotiated settlement approved by the Industrial Commission.

15. How much do I get?

Your recovery in a workers’ compensation case is generally determined by three factors:

- The specific body part involved;
- The extent of the permanent injury effects, and;
- Your average weekly wage at the time of the accident.

- Benefits are payable at 60% of your average weekly wage for permanent partial disability.

16. What if the injury is so severe that I can never go back to work?

If you are permanently disabled from returning to work because of a job-related injury, you are entitled to compensation known as "Permanent Total Disability."

- The amount of compensation you get in this event varies depending on your average wage at the time of your injury.
- If you are judged to be totally and permanently disabled, you will receive:
 - two-thirds of your average weekly wage for life, subject to a maximum weekly cap fixed by state law, and
 - Free medical care for the specific disabling injury or condition for life.

17. What if I have a heart attack? Can I receive compensation?

Under the law, if you have a heart attack you may be entitled to workers' compensation benefits.

- You must prove using medical scientific evidence that your heart condition was more likely than not caused, aggravated or accelerated by your job. This requires expert medical testimony on causation.
- Even if you have pre-existing heart disease, you may be eligible for benefits if your work was a factor in your heart attack. It does not have to be a main or primary factor: it only needs to be a factor.
- Harsh environmental conditions or especially strenuous work has often found to be a contributing factor in heart attack cases.

18. What if I get an illness or disease as a result of my occupation?

Under the Occupational Disease Act, a similar statute to the Workers' Compensation Act, an employee may file a claim for compensation if he or she proves that they:

- Contracted a disease from their work [asbestosis, etc.] or
- Their work aggravated their pre-existing illness or disease, or
- Their pre-existing disease became disabling as a result of the work.
- The medical, weekly pay benefits and permanency compensation provided in the Occupational Disease Act are identical to those provided by the Workers' Compensation Act for all practical purposes.

Occupational diseases include conditions caused, aggravated or accelerated by chemical exposure, fume exposure, inadequate ventilation, constant vibration, loud noise, radiation, etc.

19. Are workers' compensation benefits subject to income tax?

No. Workers' Compensation payments are not subject to state and federal income tax and need not be reported on tax returns as income.

20. How does an injured worker qualify for Social Security Disability?

Any worker who cannot perform any substantial gainful work due to a physical or mental condition, work-related or not, that is likely to last twelve (12) months or longer is entitled to Social Security Disability benefits. You must apply at a Social Security office.

21. Can I collect Social Security Disability benefits if I am on Workers' Compensation?

- Of course. You may receive Workers' Compensation benefits and Social Security Disability benefits at the same time.
- Social Security will not allow you to receive more than 80% of your regular salary from a combination of Workers' Compensation benefits and Social Security benefits. You must apply at a Social Security office.

22. How to pick the winning lottery ticket every time?

Sorry. We actually have no idea how to pick winning tickets. We don't like lottery odds, anyway. We just wanted to get your attention again to reiterate: Report all your injuries to management at once!

23. How long do I have to file my claim?

Illinois law allows an employee three years from the date of the accident, or two years from the date of the last payment of compensation, to file a claim.

- If you had an accident on the job within the last three years, you may still be eligible to receive some form of compensation.
- Three years and just one day is too late. Don't delay!
- Filing an incident or an accident report, or filling out insurance claim forms, is not the same thing as filing a Workers' Compensation claim with the State of Illinois Industrial Commission.
- See your Union representative or attorney immediately for more information about doing the right paperwork and getting it to the right place to protect yourself.

24. How can I expedite my case?

If an injured worker is not receiving the proper amount of benefits, or if he or she is not receiving lost time or medical benefits in a timely manner, a request for an emergency hearing may be filed:

- The law requires the Commission to issue a final decision within 180 days from the date an emergency hearing is requested.

25. Can I lose my job because I filed a claim for Workers' Compensation benefits?

It is strictly illegal for any employer, including PACE, to harass, discharge, refuse to rehire, or discriminate against an employee for exercising rights under the Workers' Compensation or Occupational Disease Acts.

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Victim's Economic Security and Safety Act

The Victim's Economic Security and Safety Act ("VESSA") provides employees of an employer which has 50 or more employees and who have been the victim of abuse or domestic/sexual violence with the opportunity to take unpaid time off from work for such things as seeking medical or legal assistance, counseling or other services, obtaining orders of protection, and looking for housing in order to escape from domestic violence.

- An employee could request time off for himself or herself or for an immediate family member who is a victim.
- An employee can take unpaid leave to:
 - Seek medical attention;
 - Obtain services from a victim's assistance organization;
 - Seek psychological assistance or counseling;
 - Participate in "safety planning"; or
 - Seek legal assistance.
- The leave requirements for VESSA are similar to the FMLA leave requirements:
 - An employee can take up to 12 weeks in a 12 month period for VESSA and FMLA leaves combined. If an employee takes 12 weeks of FMLA leave, the employee will not qualify to take additional VESSA leave and vice-versa;
 - VESSA leave may be taken intermittently or on a reduced work schedule;
 - An employee must provide at least 48 hours advance notice of intention to take leave unless notice "is not practicable";
 - When an unscheduled absence occurs, the employer cannot take any action against the employee if the employee within a reasonable period of time provides proper certification.
- A qualified employee who takes VESSA leave is entitled, upon return from leave, to be restored to the position s/he held or equivalent position with equivalent pay and benefits.

VESSA has many more rules and requirements. For more information, contact your Local Union Officer or Executive Board Member.