TAKE CONTROL
of your NC WORKERS’ COMP CLAIM
(before it controls you)

by the Law Offices of James Scott Farrin
Introduction

While it is always a good idea to consult with a qualified attorney about your potential workers’ compensation claim, there are times when you may elect to proceed without representation or when a law firm may not offer to represent you.

Regardless of representation, you should be aware of your rights and have an understanding of how the workers’ compensation system operates. The goal of this booklet is to arm you with a better understanding of your rights and to help you recognize the difficult maze of issues you may face.

No one should go through the workers’ comp process alone. If we can’t help, maybe this booklet will.

Mike MacKay, NC Board Certified Specialist in Workers’ Compensation Law

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How Workers’ Comp Works

What’s in this chapter?

1. The Six Primary Players
2. The North Carolina Industrial Commission
3. The Three Types of WC Claims
4. The Three Types of Benefits

"The workers’ compensation process is very confusing, and if you don’t follow the rules exactly, you can easily damage your case beyond repair."

Matt Harbin, Former NCIC Special Deputy Commissioner
The Six Primary Players

Let’s start with a few basics. There are several primary players in a WC claim:

1. The North Carolina Industrial Commission is a state body that administers the State’s Workers’ Compensation Act and essentially functions as the court system for WC claims. The judges are called Deputy Commissioners and make all of the judicial decisions in workers’ compensation claims.

2. The WC carrier is an insurance company hired by your employer to manage all WC claims. Their goal may be to maximize profit, even if it may mean offering substandard medical care and incomplete benefits to you.

3. The WC adjuster is an employee of the insurance carrier. He or she will often be the one making critical decisions about your claim and your medical treatment. A WC adjuster frequently has years of experience handling claims and knows how the rules may work to the insurance company’s advantage. Part of the adjuster’s job is to be skeptical of your injuries, and this affects how he or she may treat you.

4. The WC case nurse is hired by the WC carrier to “monitor” your care and report back to the adjuster. This monitoring often includes attending medical visits with you and can easily infringe on your rights to privacy.

5. Your medical doctors will typically be selected and paid by the WC carrier, which may affect the quality of treatment you receive.

6. Your employer is required to fill out certain forms and report the claim to the WC carrier. For this reason, it is imperative that you report your injury to your employer as soon as possible after it occurs. Contrary to what many people believe, filing a WC claim does not necessarily mean you are suing your employer.

The North Carolina Industrial Commission (NCIC)

The Industrial Commission (IC) is the state body that oversees all WC claims - but how does that affect you?

First, there are forms that need to be filled out and submitted to the IC with every WC claim. The Form 18 is your report that you were injured on the job. You will need to be able to explain when you were injured, where you were injured, and how it happened. Be sure to list each and every body part you believe was injured.

Second, the IC Ombudsmen can be a tremendous resource for general advice. They have a thorough understanding of the WC process and can sometimes offer guidance to help you navigate unclear issues. However, they will not be able to represent you in your claim and should not be seen as a substitute for hiring your own attorney.

Third, if the WC carrier refuses to properly honor their obligations under the Workers’ Compensation Act, you can request a hearing with the IC to force the carrier to comply.

Fourth, all WC settlements must be approved by the IC.
Three Types of WC Claims

In North Carolina, there are three basic types of workers’ compensation claims:

1. **Injury by Accident**
   An injury by accident is exactly what it sounds like. Something external happened that caused you to be injured. Perhaps you tripped and fell. Maybe a coworker ran into you with a cart. Perhaps something fell over on you. Or maybe you were injured in a car crash.

   When the cause of the injury is an accident of any sort that happened on the job, WC has to provide benefits.

2. **Specific Traumatic Incident**
   A specific traumatic incident occurs when you can point to exactly when and where you were injured, but there was no accident involved. Perhaps you bent over to lift something and your back locked up. Maybe you lifted a box of tools and your shoulder began to hurt.

   Some things that may at first look like a specific traumatic incident can fall under the definition of injury by accident. And many times, carriers will wrongfully deny a claim (when the injury is to a body part other than your back) based on their argument that there was no accident.

3. **Occupational Disease**
   Occupational disease typically refers to a condition you developed over time as a result of your job duties and/or work environment. Some of the most common occupational disease claims involve carpal tunnel syndrome or exposure to mold, asbestos, or hazardous chemicals.

In order to prevail in an occupational disease claim, you must be able to show that your job elevated your risk of injury when compared to members of the general public. This, too, can be a very tricky argument. WC often denies these claims and refuses to cover needed treatment.

Three Types of WC Benefits

In North Carolina, there are three primary types of benefits available to the injured worker:

- Medical care
- Wage loss benefits
- Compensation for permanent disability

NOTE: one item not on the list is pain and suffering. While you may experience plenty of pain and suffering due to an on-the-job injury, the WC Act does not afford payment for pain and suffering. You are limited to the three benefits listed above.

Also, your WC benefits are not dependant upon continued employment; so if your employer terminates you, your WC benefits can still continue.

**Medical Care Benefits**

The WC carrier has to pay for all medical care related to your WC injury, but they also get to choose the doctors you will see and must pre-approve significant treatment or diagnostics. They often send you to “company doctors” who may try to minimize your injury in order to discourage you from pursuing your claim. They may drag their heels on approval for
may be trying to avoid paying you this indemnity amount for being out of work. The amount of pay you are entitled to is generally two-thirds of your average weekly earnings for the one-year period immediately preceding the injury (assuming you have worked for the same employer a year or more), up to a maximum benefit of a little more than $900 per week. We call this payment “temporary total disability” or TTD. It will continue as long as the doctor agrees you are medically unable to work or until you settle your claim.

If you return to a lower-paying or part-time job, then you are entitled to two-thirds of the difference between your new weekly earnings and your average weekly earnings for the one-year period preceding the injury. (Again, assuming you have worked for the same employer a year or more.) We call this payment “temporary partial disability” or TPD.

Unfortunately, we often see carriers miscalculate TTD. They may omit overtime or bonus pay when they take an average. Or the employer may submit incorrect information about your pay and hours. Since you’re already getting reduced pay, an error in how much you are supposed to receive can be very damaging to you and your family.

Carriers can sometimes seem to play games with the amount of TTD or TPD they cover - not to mention the fact that the day you receive the check often varies week to week.
Compensation For Permanent Disability

If you have a permanent injury, you will be entitled to payment for that permanency. Each body part has a specific value rating under the law. For instance, under the workers’ compensation system, the back is the most valuable body part and can be worth up to 300 weeks of pay. The following chart shows the maximum weeks of compensation for various body parts:

<table>
<thead>
<tr>
<th>Body Part</th>
<th>Weeks of Compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thumb</td>
<td>75</td>
</tr>
<tr>
<td>First/Index Finger</td>
<td>45</td>
</tr>
<tr>
<td>Second/Middle Finger</td>
<td>25</td>
</tr>
<tr>
<td>Third/Ringer Finger</td>
<td>144</td>
</tr>
<tr>
<td>Fourth/Little Finger</td>
<td>120</td>
</tr>
<tr>
<td>Great/Big Toe</td>
<td>35</td>
</tr>
<tr>
<td>Any Other Toe</td>
<td>20</td>
</tr>
<tr>
<td>Hand</td>
<td>200</td>
</tr>
</tbody>
</table>

Again, remember that the numbers shown in the chart reflect the maximum number of weeks of compensation, assuming 100% disability to the affected body part. Most of the time, your actual rating will be substantially lower. For example, a 10% rating to your back would equate to 30 weeks of pay (at the TTD rate referenced previously).

There are two types of settlements to compensate you for this permanency at the end. The first is a Form 26A settlement. Here, the WC carrier simply pays the value of the permanency rating you have received. The second is a Clincher Agreement. Here, you also receive the value of the rating, but you may also be entitled to reimbursement for future medical expenses, future lost income, and even training or education for a new career if you are unable to return to your old job.

PLEASE NOTE: These settlements can be very tricky - if you have any sort of permanent injury or surgery, you should at least consult an attorney before trying to settle the claim on your own. In most permanent injury cases, you will be better off having representation. The earlier you engage representation, the better.

Navigating the Tricky Parts

What’s in this chapter?

1. Settling Your WC Claim
2. When to Call an Attorney
3. Traps and Pitfalls

Workers' compensation cases have the unique ability to directly affect most things people hold dear - their health, their job, their finances, and their family. You need to take your time and tread carefully.

Doug Berger, NC Board Certified Specialist in Workers’ Compensation Law & Former North Carolina State Senator
Settling Your WC Claim

Once you have reached the maximum health recovery possible (we call this “maximum medical improvement” or MMI), the WC Carrier will typically contact you about closing your claim. There are several very different ways to resolve a workers’ compensation claim, and the decision can be extremely complicated.

We highly recommend you consult with an attorney prior to reaching any sort of agreement with the insurance company, especially if you have suffered any sort of permanent injuries.

A light injury from which you completely recover will generally mean you do not receive a settlement at the end. If you have a complete physical recovery and your job is not endangered, you probably do not need an attorney. But if you have a permanent injury, you will probably benefit from competent representation.

Once you are done with your treatment, settling a WC claim can be a bit of a shell game if you have a permanent injury. When you don’t have representation, the carrier may undervalue your claim. They may say you are not entitled to any payment even though you have a permanent injury. They may also push toward a Form 26A settlement, which allows them to not pay for future lost income or the value of future medical expenses. (Although it does generally keep the carrier responsible for additional care for two years from the date of the settlement.) Their argument is that you still have your job, but the truth is that many people lose their jobs shortly after settling their WC claim. This shell game can cost you tens of thousands of dollars.

There are three basic ways your case can be finalized:

- **Minor Injury**
  Case is simply closed out once you complete treatment for a minor injury.

- **Permanent Damage**
  You receive payment for your impairment rating under a Form 26A.

- **Permanent Damage + Future Expenses**
  You receive payment for your impairment rating and any appropriate future issues (treatment, lost income, and/or education) under a Clincher.

There are times when an F26A settlement is the appropriate course. And there are times when a Clincher is in your best interest. If you have a permanent injury or underwent surgery, we cannot stress strongly enough that you should review your case with a qualified attorney so that you can choose your best course. We need to review your case with you in order to give you accurate advice. There is no one-size-fits-all answer.

When your case finally settles, the money is not paid immediately. You must wait for the IC to first approve the settlement, then sign papers finalizing the settlement, and then wait for a check to be cut. This process alone can easily take several months.

When to Call an Attorney

While one goal of this booklet is to arm you with enough knowledge to understand the basics of workers’ compensation law, there are still certain triggers that indicate you should call an attorney immediately, even if your case was previously reviewed by an attorney.

**Termination**

If the employer terminates your employment, this is usually a good time to speak with an attorney to help determine if this change in status has an effect on your claim or on your need for representation.

**Refusal to File WC**

Some employers try to intimidate their employees into not filing WC claims, and some simply refuse to file. If your employer is not cooperating, you may need to take additional steps to protect yourself.
Despite the obvious danger signs, some people choose to take the risk of trying to handle their claim without representation or even guidance from a qualified workers’ compensation attorney.

Right out of the gate, you need to be aware that a clock begins ticking the minute you are injured on the job. Although it may seem unfair, the law requires that you – the injured employee – ensure proper notice about the injury is given to your employer and to the North Carolina Industrial Commission. People sometimes mistakenly believe simply telling a coworker constitutes sufficient notice. We have many hard-working people in North Carolina, and frequently, people try to work through an injury and then find the claim denied when they finally report it. Don’t make that mistake.

Unfortunately, the law punishes people who think they are doing the “right thing” by not formally filing a claim immediately.

There is a legal requirement for the claim to be properly filed with the Industrial Commission within 30 days of the injury. This notice has to be in writing and on a special form provided by the Industrial Commission.

You should also give immediate formal notice to your employer. This often involves filling out an incident report or similar paperwork. If you fail to give proper, timely notice of the injury, the workers’ compensation insurance company may deny your claim. In fact, the insurance companies will even sometimes deny the claim if you fail to give notice to your employer within 24 – 48 hours, even though the legal notice requirement is 30 days.

**Denial**

Even after you have jumped through all the hoops, you may find yourself facing an unsympathetic bureaucracy. If your claim has been denied, it is time to call a qualified WC attorney for guidance.

**Surgery**

We cannot stress this enough: if the doctor orders surgery, you should speak to an attorney about your case immediately. A good attorney should know the reputations of the surgeons and also be able to help make sure that you will be treated fairly if the WC carrier wants a second opinion.

**Permanent Injury**

As noted above, when you have a permanent injury, we advise that you speak with an attorney. Much of the value of your claim depends upon the degree of permanency and how it affects you in your job. Good workers’ compensation attorneys understand the financial ramifications associated with permanent injuries.

**Treatment Issues**

There are times when the medical care you are provided is not helping, yet the WC carrier refuses to get you to a specialist. An attorney may be able to help ensure you get proper care.

**Offer to Settle**

If the WC carrier is offering a settlement, it is because they realize there is a permanent injury or rating from surgery. Please call an attorney to review the offer before you agree to settle your claim for pennies on the dollar.

**Impairment Rating**

If a doctor discusses or assigns an impairment rating to you, it is definitely time to consult an attorney. An experienced attorney can guide you on whether you need a second opinion and which doctors to see for a second opinion. They can also help make sure the rating is done fairly.

**Traps and Pitfalls**

Despite the obvious danger signs, some people choose to take the risk of trying to handle their claim without representation or even guidance from a qualified workers’ compensation attorney.

This section is not a substitute for speaking with us about the particulars of your case, rather it is designed to give a brief overview of some of the more frequent traps we see injured workers fall into when they try to handle the claim on their own.

**Notice**

Right out of the gate, you need to be aware that a clock begins ticking the minute you are injured on the job. Although it may seem unfair, the law requires that you – the injured employee – ensure proper notice about the injury is given to your employer and to the North Carolina Industrial Commission. People sometimes mistakenly believe simply telling a coworker constitutes sufficient notice. We have many hard-working people in North Carolina, and frequently, people try to work through an injury and then find the claim denied when they finally report it. Don’t make that mistake. Unfortunately, the law punishes people who think they are doing the “right thing” by not formally filing a claim immediately.

In fact, the insurance companies will even sometimes deny the claim if you fail to give notice to your employer within 24 – 48 hours, even though the legal notice requirement is 30 days.
Traps and Pitfalls Continued

Sadly, there are employers who abuse this knowledge. They will tell you to see how you feel later, or they don’t want to file a report because it will reflect poorly on them. If they stall you long enough, you can lose all rights to make a claim.

Or they will tell you that a “verbal report” is sufficient and that you don’t need to file a written report, but they mysteriously “forget” that conversation later when you are trying to get the workers’ compensation insurance company to authorize needed medical treatment.

**Always file a written report.** There is a serious problem whenever your manager is more concerned with their image or convenience than your well-being.

If anyone else witnessed the injury, get their full names and phone numbers.

Too many times, we have had to fight over whether an injury even happened because an employer lied about whether there was a “verbal report,” and the injured worker did not have the correct names or contact information for witnesses (who may have moved on to another job by the time we reached that point in the process).

If it has been more than 30 days since the injury, it is worth contacting a qualified attorney to see if they can revive the claim.

Our firm has been able to salvage a number of cases when the client contacted us after digging a serious – and completely avoidable – hole for themselves on the notice issue. We cannot save every case, but our experience can sometimes help overcome self-inflicted damage to the case.

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**Statements About the Injury**

There are several potential issues at play when we discuss statements about your injury.

1. **When you fill out paperwork**, you need to be careful how you describe the incident. Of course, you must be accurate. But people frequently leave out important details or put in extraneous details.

2. **An adjuster will sometimes ask for a recorded statement upfront.** This can be a very dangerous time.

The reason these details – written and oral – are important is because some types of injuries at work are not covered by the Workers’ Compensation Act. And some injuries that are covered can sound very similar to injuries that are not covered.

If you can’t properly describe how the injury occurred, the adjuster may argue your injury is not covered even when it should be under the law.

For instance, an “injury by accident” is always covered, but a “specific traumatic incident” is only covered for injuries to certain body parts. Sometimes, there can be overlap between the two.

**Example**

Let’s imagine you slipped and fell at work. When you slipped, did your knee just give way, or was there something on the floor that made you slip?

If your statement is not explicit about what made you fall, the adjuster may assume nothing made you fall.

If you can’t properly describe how the injury occurred, the adjuster may argue your injury is not covered even when it should be under the law.

For instance, an “injury by accident” is always covered, but a “specific traumatic incident” is only covered for injuries to certain body parts. Sometimes, there can be overlap between the two.

**Medical Care**

The workers’ compensation carrier has to provide treatment for you; however, they get to choose the doctors. This is a frequent point of contention when injured workers do not understand the constraints of the system. Many people go to their own doctors
Many people do not realize that the doctor and adjuster cannot simply cut off their benefits and force them back to work. There are procedures that must be followed.

People can easily make the mistake of becoming passive about their medical care. Please don’t make that mistake. You should communicate clearly about the issues you are experiencing, even if the doctor seems to be ignoring you. That way, you at least have documented the medical issues so the adjuster cannot deny them later when you are able to be seen by a more receptive physician.

Further, at certain points in your treatment, you may be entitled to an independent second opinion from a doctor of your choosing. This can be vitally important when you are considering surgery or have reached maximum medical improvement and need an impairment rating. An experienced workers’ compensation attorney should know which doctors are fair and can help guide you in this process.

Time and time again, we see doctors release injured workers to return to work when the employee is simply unable to fully perform his or her job. There are a myriad of reasons this happens, but the result is almost always bad for the worker.
Work and Wages Continued

Beyond that, if you do return to work prematurely, it ends your wage benefits and then you may have to wait several weeks to resume the benefit if you are unable to work. This loss of wage benefits can also have a negative impact on your ability to obtain a fair settlement for any permanent injuries at the conclusion of your treatment.

We sometimes see employers force injured workers to return to something called a “make-work” position. This type of position is not a real job; it is a job the employer has come up with to force the injured worker to return to work. This is a less than ideal situation, though, because most of these jobs are by nature temporary and can cause problems with your WC claim. An attorney may be able to help prevent you from being taken advantage of with a make-work position.

Valuation

At the end of your treatment, if you have a long-term injury, you will probably be entitled to compensation for permanency. However, this can be an extremely complicated calculation that may include the degree of injury itself (and making sure you have a fair rating), future income potential, ongoing or future medical expense projections, and even payment for training or education for a new type of job.

There are other considerations, such as whether any settlement should be paid in a lump sum or an annuity. Also, if you receive government benefits, are disabled, or are old enough to receive government benefits in the near future, you may need to deal with something called a Medicare Set Aside (MSA). MSAs are extremely complicated and are typically involved if an injured worker receives Medicare, is near the age for receiving Medicare, or is likely to qualify for disability under Medicare.

In Conclusion

The nuances of handling a WC claim would fill a large book; in fact, there are already many large books attempting to properly explain WC. Board Certified Workers’ Compensation Specialists devote years of their practice to learn the intricate details of the workers’ compensation system in order to protect their clients.

Part of our goal with this booklet is to arm you with the most relevant information and provide a basic overview that can help you know what to expect and what dangers to be on the lookout for. One of the worst mistakes you can make, though, is trying to handle the claim on your own without getting good advice. Even if you do not hire an attorney, you should at least speak with a knowledgeable workers’ compensation attorney who can help guide you through the process.

The attorneys at our firm take great pride in helping injured workers. We have helped thousands of injured North Carolinians fight for the benefits they deserved. Our commitment to you is that we will offer thorough, honest advice - the same advice, in fact, we give our friends and family when we speak with them.

Our goal is to help you gain the best result possible in your claim. If representation furthers that goal, we will encourage you to hire a qualified attorney. However, there are certainly times when representation is not appropriate. Regardless of whether we represent you, we can provide valuable and helpful information and guidance. When you are ready to arm yourself further, give us a call.

- Michael Jordan
Michael Jordan, Author & Workers’ Compensation Attorney
Since 1997, we’ve recovered over $750 million total for more than 30,000 clients.*

Plus a $1.25 billion settlement for over 18,400 farmers in a historic class action case.

We’ve been able to do all of this because we have lots of quality professionals. Over 35 attorneys. Over 100 staff. 7 attorneys board certified in North Carolina in their fields.

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