

A FREE PUBLICATION

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 an attorney about your workers' compensation claim, there are times when you may elect to proceed without representation.

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 those rights and to help you recognize the difficult maze of issues you may face.

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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. Three Types of WC Claims
4. 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 the judicial decisions in workers' compensation claims.
2. The **WC carrier** is an insurance company hired by your employer to manage its WC claims. Their goal may be to maximize profit and not to advocate for the claimant.
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 may be skepticism of your injuries, and this can potentially affect how he or she treats you.
4. The **WC case nurse** is hired by the WC carrier to "monitor" your care and report back to the adjuster. This monitoring may include attending medical visits with you.
5. Your **medical doctors** will typically be selected and paid by the WC carrier, which can raise questions about 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 is not the same thing as suing your employer.

The North Carolina Industrial Commission (NCIC)

The Industrial Commission (IC) is the state body that oversees 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. 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 you have a grievance with how the WC carrier is handling your claim, you can request a hearing with the IC.

Fourth, WC settlements must be approved by the IC.

FORM 18

You can get the form by calling the IC (800.688.8349) and asking them to mail you one. There is even an electronic version you can fill out online, just visit the NCIC's website at: www.ic.nc.gov/forms.html.

Turning the F18 in to the IC triggers IC oversight of the claim and helps prevent the carrier from neglecting your claim.

As a general rule, the F18 must be submitted to the NCIC within 30 days of the injury.

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 that happened on the job, WC generally 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.

In a workers' compensation context, these cases typically only apply to spine injuries. For this reason, you should discuss the nature of the injury with an attorney.

Some things that may at first look like a specific traumatic incident can fall under the definition of injury by accident. And sometimes, 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 refers to a condition developed over time as a result of job duties and/or the 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 treatment.

Three Types of WC Benefits

In North Carolina, there are three primary types of benefits available to eligible injured workers:

Types of NC Workers' Comp Benefits

1. Medical care
2. Wage loss benefits
3. 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.

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

Medical Care Benefits

The WC carrier has to pay for medical care related to your eligible WC injury, but they also generally get to choose the doctors you will see and must pre-approve significant treatment or diagnostics.

They often send patients to “company doctors” who may sometimes try to minimize your injury. Some of them may sometimes drag their heels on approval for treatment or diagnostics, such as surgery, physical therapy, or an MRI.

As long as you heal quickly and the injury is not serious, this sort of possible conduct by the carrier may not pose a real problem, but if you have a more serious injury, you may need an attorney on your side to help you seek different treatment.

In addition to the actual medical care itself, the WC carrier generally has to either reimburse you for mileage if you have to travel more than 20 miles round trip for medical care or, in some cases, provide transportation to and from your medical appointments.

The WC carrier generally pays for all medical costs related to your treatment, including prescriptions. However, keep in mind that you may need to fight to try and get your preferred care. In more serious injuries, you will almost always benefit from representation.

As you continue treatment, make sure the doctor documents all issues. The adjuster may deny treatment for your knee, for instance, if the first mention of it being sore is several months after the injury. If you have a permanent injury, you should receive an impairment rating at the conclusion of your treatment, and you are

generally entitled to an independent second opinion on that rating with a doctor of your choice. These are issues where an attorney may be able to make a difference in your potential financial recovery.

Wage Loss Benefits

When you miss more than seven days of work (not necessarily seven consecutive days) due to a WC injury, wage loss benefits may come into play. But please remember eligible workers will not be paid for the first seven days unless they are out more than 21 days.

This is why some company WC doctors may sometimes try to push you back to work once you have been out five or six days; the WC carrier may be trying to avoid potentially paying you this indemnity amount for being out of work.

The amount of pay eligible workers are generally entitled to is two-thirds of their average weekly earnings for the one-year period immediately preceding the injury (assuming they have worked for the same employer a year or more), up to a

Don't be intimidated by the doctor. If you don't have an attorney on your side, you have to be your own advocate. Remember, WC may have picked your doctor for their own reasons, and those reasons may not coincide with your best interests.



maximum benefit of about \$1,380 per week. This payment is called “temporary total disability” or TTD. It will generally continue as long as the doctor agrees the patient is medically unable to work or until the claim is resolved.

If the patient returns to a lower-paying or part-time job, then they are generally entitled to two-thirds of the difference between the new weekly earnings and the average weekly earnings for the one-year period preceding the injury. (Again, assuming they have worked for the same employer a year or more.) This is called “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 may potentially 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 an eligible worker receives their check can sometimes vary from week to week.

Types of Compensation for Permanent Disability

If you have a permanent injury, you will generally 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 potential compensation for various body parts:

Body Part	Weeks of Possible Compensation	Body Part	Weeks of Possible Compensation
Thumb	75	Arm	240
First/Index Finger	45	Foot	144
Second/Middle Finger	40	Leg	200
Third/Ring Finger	25	Eye	120
Fourth/Little Finger	20	Hearing (one ear)	70
Great/Big Toe	35	Hearing (both ears)	150
Any Other Toe	10	Back	300
Hand	200		

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

There are two types of settlements to potentially 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 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. The earlier you engage representation, the better.

Navigating the Tricky Parts

What’s in this chapter?

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

“Workers’ compensation cases have the 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 State Bar Board Certified
Specialist in Workers’ Compensation Law &
Former North Carolina State Senator

Resolving Your WC Claim

Once you have reached the maximum health recovery possible (this is called “maximum medical improvement” or MMI), the WC Carrier should 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 representation.

Once you are done with your treatment, resolving a WC claim can be complicated if you have a permanent injury. When you don’t have representation, the carrier may undervalue your claim. A carrier may say you are not entitled to any payment even though you have a permanent injury. They may 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.)

There are three basic ways your case can be finalized:



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, you should review your case with a qualified attorney so that you can choose your best course. Your attorney needs to review your case with you in order to give you accurate advice. There is no one-size-fits-all answer.

If your case 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 may 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 may 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.



Denial

Even after you have jumped through all the hoops, you may find yourself facing an unsympathetic bureaucracy. If your claim has been denied, 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. An attorney can help make sure that you are being treated fairly if the WC carrier wants a second opinion.

Treatment Issues

There are times when the medical care you are provided is not helping, yet the WC carrier denies your request to see a medical specialist. An attorney may be able to help.

Offer to Settle

Please call an attorney to review the offer before you agree to settle your personal injury claim, possibly for pennies on the dollar.

Impairment Rating

If a doctor discusses or assigns an impairment rating, you should consult an attorney. An experienced attorney can guide you and help ensure the rating is done properly.

Permanent Injury

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

If you find yourself facing any of these situations, we strongly encourage you to call an experienced WC attorney.

Traps and Pitfalls

Some people choose to take the risk of trying to handle their claim without representation or guidance from a qualified workers’ compensation attorney. This can be dangerous to your claim.

This section is not a substitute for speaking with an attorney 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 sometimes 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 does not tend to protect 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, generally 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, an insurance company may 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 generally 30 days.

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STOCK PHOTO

Sadly, there are some employers who may sometimes abuse this knowledge. They may tell you to see how you feel later, or they may not want to file a report because it will reflect poorly on them. If they stall long enough, you may lose your rights to make a claim.

Or they may tell you that a verbal report is sufficient and that you don't need to file a written report, but then "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. 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 there was only a verbal report, or 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 reach 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 the claim is still viable.

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.

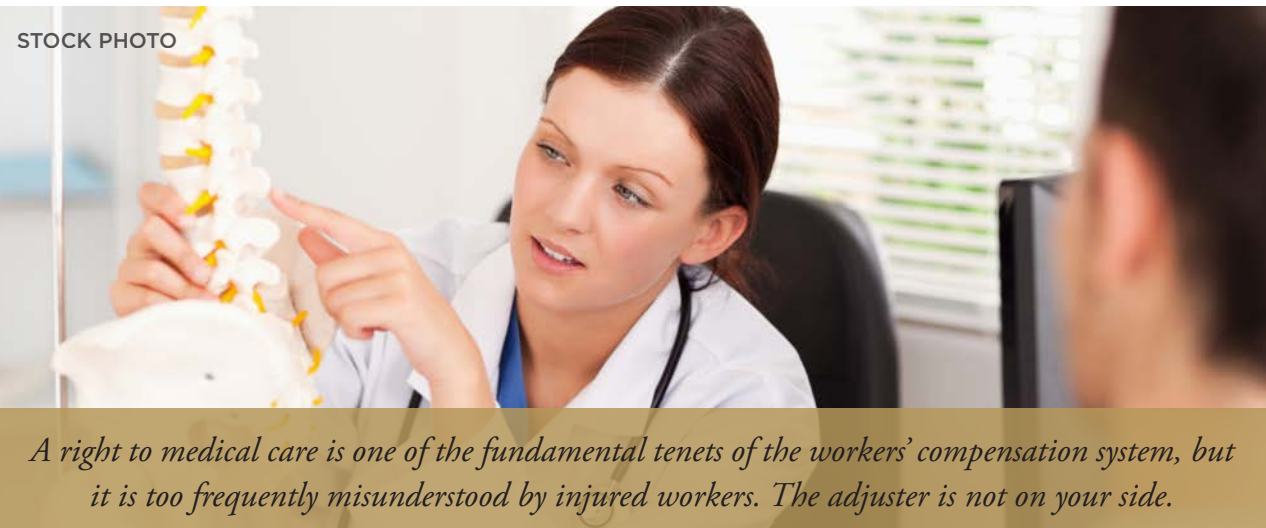
If you don't properly describe how the injury occurred, the adjuster may argue your injury is not covered even when it could very well be covered under the law.

For instance, an "injury by accident" is typically covered, but a "specific traumatic incident" is only generally 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. This is an important distinction. If your knee just gave way, your claim is not likely covered unless you injured your back. If you slipped or tripped on something, then any resulting injury can potentially be covered.



A right to medical care is one of the fundamental tenets of the workers' compensation system, but it is too frequently misunderstood by injured workers. The adjuster is not on your side.

Medical Care

The workers' compensation carrier has to provide treatment for eligible workers; 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 without getting clearance from the adjuster, only to later discover the carrier will not pay for that doctor or even honor that doctor's opinion. There are even times we have seen claims denied due to the carrier's refusal to acknowledge treatment the injured worker had arranged on his or her own.

However, the fact that the carrier broadly has the right to direct the care does not mean they can arbitrarily terminate your treatment. There is a process they must follow. Likewise, there is a process we know how to pursue via the North Carolina Industrial Commission if you are dissatisfied with your treatment. Along those same lines, you can petition to change medical providers if there is a sufficient basis for doing so.

The WC carrier may assign a rehab nurse or case management nurse to your claim. The nurse is an independent contractor, chosen and paid by the insurance company. Some nurses try to accompany you on your visit with the doctor. You have the right to a private consultation with your doctor, but you will also need to account for the fact that the nurse will still likely communicate with your doctor — sometimes even arguing with the doctor about necessary care.

Another big issue is that you need to be a good advocate for yourself when it comes to treatment. We sometimes hear complaints that some doctors provided by the workers' compensation carrier do not always seem to care.

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 as easily deny them later.



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 can guide you through this process.

Work and Wages

Time and time again, we see doctors release injured workers to return to work when the employee feels unable to fully perform his or her job. There are a myriad of reasons this can happen, but the result can be bad for the worker.

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.

Work and Wages Continued

Beyond that, if you do return to work prematurely, this ends your wage benefits and then you may have to wait several weeks to resume benefits (assuming they are reinstated) if you are unable to work. This loss of wage benefits can also have a negative impact as you seek to obtain a fair settlement for any permanent injuries at the conclusion of your treatment.

We sometimes see some employers pressure injured workers to return to something called a “make-work” position. This is a job the employer has come up with to allow the injured worker to return to work. This can be a less than ideal situation, though, because many of these jobs are by nature temporary and can potentially 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 in an annuity. Also, if you receive government benefits, are disabled, or are of eligible age 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. NC State Bar Board Certified Workers' Compensation Specialists devote years to learn the intricate details of the workers' compensation system in order to try and protect their clients as best as possible.

Part of our goal with this booklet is to arm you with 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 potentially make, though, is trying to handle the claim on your own without getting good advice.

The attorneys at our firm take great pride in helping injured workers. We have helped thousands of injured North Carolinians fight for benefits. Our commitment to our clients is that we will offer thorough, honest advice.

Our goal is to help you fight for the best result possible in your claim. If representation furthers that goal, we will encourage you to hire a qualified attorney. However, there are times when representation is not necessary. Regardless of whether we represent you, we can provide a free case evaluation. 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 \$2 billion total for more than 73,000 clients.*

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We've been able to do all of this because we have lots of quality professionals. Over 60 attorneys. Over 200 staff. 11 attorneys board certified by the North Carolina State Bar in their fields.

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