

Workers' Compensation Facts and Terms

By: Frank J. Dito Jr.



DECKER, DECKER, DITO & INTERNICOLA^{LLP}
ATTORNEYS AT LAW

Decker, Decker, Dito & Internicola, LLP
1610 Richmond Road
Staten Island, NY 10304

718.979.4300



DECKER, DECKER, DITO & INTERNICOLA^{LLP}

A T T O R N E Y S A T L A W

**Decker, Decker, Dito
Internicola, LLP**

1610 Richmond Road
Staten Island, NY 10304

Phone: 718.979.4300

Fax: 718.351.3514

Email: fdito@dddilaw.com

www.DDDILaw.com

Copyright © 2009 of Frank J. Dito Jr.

All rights reserved. No part of this report may be reproduced, stored in a retrieval system or transmitted by any means, electronic, mechanical, photocopying, recording, or otherwise without written permission by the author.

Printed in the United States of America

Information about your disability case and compensation

Who pays my attorney's fees?

The money for your attorney comes from any money that you receive at your hearing. Such fees are approved by the Workers' Compensation judge.

How is my extent of disability determined?

A single-digit numeric code used by the WCB's Research and Statistics unit to characterize the disability classification assigned to a case closed with indemnity benefits. The codes are:

- 0 = Death case
- 1 = Permanent total disability
- 2 = Permanent partial disability (PPD) - Schedule award only
- 3 = Facial disfigurement award only
- 4 = Schedule PPD and facial disfigurement award
- 5 = Temporary disability only
- 6 = Temporary disability and facial disfigurement award
- 7 = Non-schedule PPD - Lump sum settlement
- 8 = Non-schedule PPD - No present loss of earnings
- 9 = Non-schedule PPD - Carrier to continue payments

What types of financial benefits may I receive for my work related injury?

There are six types of award are permitted by the WCL for non-medical loss:

- temporary total disability benefits , for periods when you have been unable to work;
- temporary partial disability benefits, for periods when you have been unable to work your normal hours or at your normal pay;
- facial disfigurement awards are subject to a judge's discretion for facial disfigurement resulting from your work-related accident;
- permanent partial disability benefits are awards for loss of physical function or for periods of partial wage loss after a claimant has been classified as having a permanent partial disability;
- permanent total disability benefits are for loss of your wage earning capacity after you have been classified as having a permanent disability; and
- death benefits, which are compensation benefits awarded to a spouse, children or other family members following a work-related death.

How much money will I receive while I am not working?

Cash benefits are not paid for the first seven days of your inability to return to work, unless your inability extends beyond fourteen days. If you are unable to return to work for more than fourteen days after you were first hurt, you will receive cash from the first work day off of the job. Your medical care will be paid for no matter how short or how long the time of your inability to work.

“When you went to work, it may have seemed like any other day, until you got injured. A work accident can occur in just seconds, but the repercussions often last a lifetime.”

How much money will I receive while I am not working? (cont.)

The cash amount that you will receive is based on your average weekly wage for the previous year. The workers' compensation board uses the following formula to calculate benefits:

$2/3 \times \text{average weekly wage} \times \% \text{ of disability} = \text{weekly benefit}$

If you were earning \$400 per week and you are totally (100%) disabled, you would receive \$266.67 per week. If you were partially (50%) disabled, you would receive \$133.34 per week. However, your weekly cash benefit cannot exceed the following maximums amounts, which are based on the date of accident:

Schedule of Benefits

Date of Accident Weekly Maximum

Total / Partial

July 1, 1985 - June 30, 1990 \$300 / \$150

July 1, 1990 - June 30, 1991 \$340 / \$280

July 1, 1991 - June 30, 1992 \$350 / \$350

July 1, 1992 - June 30, 2007 \$400 / \$400

July 1, 2007 - June 30, 2008 \$500 / \$500

July 1, 2008 - June 30, 2009 \$550 / \$550

July 1, 2009 - June 30, 2010 \$600 / \$600

Useful Workers' Compensation Terms

Below is a list of terms you may hear throughout your workers' compensation case. In order to help you understand your workers' compensation case better we have listed some of the most common terms that will be used throughout your case. If at any time you have any questions about a term we are using throughout your case and if we don't already explain it feel free to ask and we will be glad to explain – we are here to help you.

Work related accident: An “event, arising out of and in the course of employment that results in personal injury to a worker.” If you were hurt at work, you most likely had a work related accident and would need to file a claim under the workers' compensation law.

Reopened Case: A workers' compensation case which has been closed by a Workers' Compensation Law Judge or a Board Panel that is subsequently made active again to determine the claimant's eligibility for benefits.

Indexed claim: When your claim case folder which has been assembled and assigned a case number by the workers' compensation board.

On the calendar: the list of the cases scheduled to be heard on a given date at a workers' compensation board hearing location.

Reduced earnings claim: A compensation rate based on your partial wage loss or your partial loss of earning capacity because of your medical condition resulting from your work related injury.

Claims Information Systems (CIS): A system used by the Workers' Compensation Board's Claims Unit to record basic case information such as the parties of interest, current issues and scheduled hearings.

Workers' compensation board: The board is the agency charged with administering the Workers' Compensation Law. The thirteen member Board is responsible for determining all issues involving claims under the WCL. Members are appointed to seven-year terms by the Governor of New York, by and with the advice and consent of the Senate. The Governor designates the Chair and Vice-Chair.

Workers' compensation law judge: A judge that is appointed by the Chair of the Workers' Compensation Board to hear and determine claims and to conduct such hearings and investigations and make such orders, decisions and determinations as may be required in the adjudication of the claims. A Judge's decision is deemed the decision of the Board unless the Board modifies or rescinds such decision.

Trial calendar hearing: a hearing on your claim before a workers' compensation law judge. It is designed to allow the introduction of evidence and/or witnesses and the presentation of arguments by the parties.

Workers' compensation hearing: allows for all interested parties to be present before a Workers' Compensation Law Judges for the purpose of ascertaining the rights of the parties. The parties have the right to present evidence, including witnesses, to determine

Board Panel: A panel usually comprised of three Workers' Compensation Board members, at least one of whom must be a lawyer, that reviews requests to amend decisions made by Workers' Compensation Law Judges, reopens closed cases and considers applications for lump sum non-schedule adjustment awards.

Permanent partial disability: The maximum benefit week schedules in the WCL are generally used in determining lifetime benefits for injuries to major body parts. Injuries amounting to less than total functional loss are awarded a percentage of the scheduled weeks, and there are also provisions for additional weeks required for a longer healing period based upon your injury.

Total disability: You lack the ability to work in some substantially gainful occupation without serious discomfort or pain and without further injury to your health or danger to life.

Tentative rate: A weekly rate assigned by the Workers' Compensation Board for the insurance carrier to pay you indemnity payments, while awaiting the final outcome of the determination of any outstanding issues relating to your final benefit rates.

Reduced Earnings: A compensation rate based on the claimant's partial wage loss or partial loss of earning capacity due to a condition related to a compensable work-connected injury.

Non-compensated case: A closed case which has never awarded indemnity benefits.

Scheduled Settlement: Scheduled weekly benefits are awarded. There are also provisions for additional weeks required for a protracted healing period.

Lump sum settlement: A negotiated and Board-approved agreement between a claimant with a permanent partial disability and the insurer(s). As a result of the agreement the claimant receives a sum of money which would represent the future compensation for his/her permanent partial disability, and your case is considered closed. Under WCL .15(5-b), granting of a settlement by the Board requires that (a) the right to compensation has been established and compensation has been paid for at least three months, (b) the continuance of disability and of future earning capacity cannot be ascertained with reasonable certainty, (c) there has been a physical examination of the claimant prior to approval, and (d) the Board considers the settlement "fair and in the best interest of the claimant." In practice, lump sum settlements are usually final, but the law provides for your case to reopen if the Board finds that there has been a change in your condition or degree of disability not contemplated at the time of the settlement.

Decision: a determination of a Workers' Compensation Judge or Board Panel arrived at after consideration of an issue at a hearing. The decision may contain approval for your continued medical treatment, monetary awards that the insurance carrier is required to pay as well as future hearing dates.

Third-party action: A lawsuit against any other negligent party, including equipment manufacturers, facility owners and other non-employer parties whose products or services contributed to your accident. Under the workers' compensation law, you are unable to sue your employer, but lawsuits may be started against third parties for product defects, slippery floors, etc.

**Decker, Decker, Dito
& Internicola, LLP**

With a 25 year long tradition and history of delivering exceptional legal services within the Staten Island community, New York and New Jersey, the Staten Island law firm of Decker, Decker, Dito & Internicola, LLP is committed to providing each and every one of their clients with legal representation and services that make a difference.

With a legacy of leadership, excellence and reliability, the attorneys at DDD&I understand that effective representation starts with listening and active communications with their clients. Only after extensive communication with a client to evaluate the client's potential case and to discuss the legal process and available options will the attorneys at DDD&I accept engagement in a new legal matter.

**Decker, Decker, Dito
& Internicola, LLP**

1610 Richmond Road
Staten Island, NY 10304

Phone: 718.979.4300

Fax: 718.351.3514

Email: fdito@dddilaw.com

www.DDDILaw.com

About the Author

Frank J. Dito Jr., Esq.

Frank J. Dito, Jr. is a partner in the Staten Island, New York law firm of Decker, Decker, Dito & Internicola, LLP where he practices Personal injury Law. For over 11 years, Frank has been helping people who have been injured in car, truck and motorcycle accidents. He has experience negotiating with insurance companies and trying car accident injury and death cases. Frank also helps people who have been injured in slips and falls, by dangerous products, and because of medical malpractice. Frank also practices in the field of workers' compensation, helping injured workers recover financial and medical benefits for the work related injuries.

Frank is a member of the New York State Trial Lawyers Institute and the Association of Trial Lawyers of America, an organization devoted to protecting individual rights and preserving the civil jury system in America. Frank is a member of the Million Dollar Advocates Forum, an exclusive group of trial attorneys that have achieved a verdict, award or settlement in the amount of One Million Dollars or more.

Mr. Dito is licensed to practice law and regularly handles cases throughout New York State, practicing extensively in Staten Island and Brooklyn. He is a member of the Richmond County and Brooklyn Bar Associations.



DECKER, DECKER, DITO & INTERNICOLA^{LLP}

*Frank J. Dito Jr.
Attorney at Law*

