

The Impact of Lawsuit Settlements on Workers' Compensation Cases

If you are injured on the job most people are aware that a Workers' Compensation claim can and should be filed against your employer. Notice to the employer should be given as soon as possible and certainly within 30 days. The notice to the employer can be oral but normally involves some type of written accident report that your employer may require. There is no requirement that any particular type of accident report or form be used. In some unusual circumstances the 30 day notice rule can be extended.

In addition, a formal Workers' Compensation claim form (a C-3 form) must be filed within two years of the date of the accident with the New York State Workers' Compensation Board. Generally, the employer has copies of such C-3 forms for you to complete. In the alternative you can simply download a C-3 form from the New York State Workers' Compensation Board website. In some very rare instances the two-year rule can be extended. The failure to properly notify your employer or file a timely C-3 form results in a loss of all Workers' Compensation benefits for that injury. Those benefits include lifetime medical coverage for that injury and direct monetary payments to the injured person to compensate them for their loss.

What most people don't realize is that you don't have the right to bring a lawsuit against your employer. An employer is immune from suit by their employees. Even in those instances where the employer is very negligent or aware of the risk to which they expose their employees they cannot be sued. Workers' Compensation benefits are a substitute for direct lawsuits against employers. The injured worker doesn't have a choice. The only legal recourse against an employer is the timely filing of a Workers' Compensation claim.

Some injured workers are lucky in that their work related injuries were caused by the negligence of someone other than their employer or a coworker. In such cases, they still must file their Workers' Compensation claims against their employer but they are also permitted by law to bring a lawsuit against the person who negligently caused their injury. Such lawsuits are referred to "third party lawsuits" because they can only be brought against some third party who is neither a coworker nor the employer. When an injured worker brings such a third party lawsuit they are actually doing their employer a favor because the employer gets a lien against the lawsuit for payments made to the injured worker in Workers' Compensation.

In fact, if an injured worker settles such a lawsuit without obtaining the written permission from the employers Workers' Compensation insurance company the penalty is quite severe: the permanent loss of Workers' Compensation for that injury forever. The attorney representing the injured worker in the third party lawsuit generally obtains the needed written consent. It is very important if you have such a third party lawsuit to make certain that your attorney is aware that you have a companion Workers' Compensation claim.

In addition to giving the employer (really the employers' Workers' Compensation insurance company) a lien against the proceeds from a third party lawsuit, the law gives the employer one additional benefit called "deficiency compensation". What this concept means is that the employer gets a credit or a "deductible" against future Workers' Compensation payments for that injury equal to the amount of money the injured worker netted in the third party lawsuit.

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Let me give you an example:

A worker is employed in a school district as a custodian. He is injured one day at work when a painting contractor dropped a filled gallon paint can from a ladder that struck him in the head. He loses six months from work during which he gets full pay from his employer and has \$20,000.00 in medical bills. He files a timely Workers' Compensation claim and all his medical bills are paid by the employers' Workers' Compensation insurance company. Eventually he has a hearing on his Workers' Compensation claim and the Workers' Compensation Law Judge awards him \$600.00 per week (the maximum rate payable) for each week that he was out of work, as a result of the injury. For the six months that he was out of work the award would total \$15,000.00. Generally, the Judge would direct the \$15,000.00 to be reimbursed to the employer to partially reimburse them for the wages paid to the injured worker for the six months that he was home. The employer's insurance company has now paid out a total of \$35,000.00 on this claim. The injured worker also brings a lawsuit against the contractor (who is neither his employer nor a coworker).

Several years later that case is settled at court with a liability insurance company for the contractor. After payment of the attorney fee the sum of \$300,000.00 remains. The attorney handling that case contacts the Workers' Compensation insurance carrier to obtain their written consent to the settlement. They readily agree, provided that they are reimbursed for their lien of \$35,000.00. After payment of the lien the injured worker nets or clears the sum of \$265,000.00. (That sum would be tax free). In addition to their lien, the Workers' Compensation insurance company also has the benefit of "deficiency compensation" in the sum of \$265,000.00. If the injured worker loses more time from work or needs additional medical treatment for this condition he must pay it out of his own pocket until he has used up \$265,000.00 of either medical payments or lost wages. In effect, the third party settlement acts as a prepayment of future Workers' Compensation payments and relieves the employer of the responsibility to pay either medical bills or money to the injured worker for a very long time or perhaps forever. It's easy to see how an employer should actually encourage injured workers to look for possible third party lawsuits to pursue when an accident occurs.

The foregoing is a brief overview of the interplay between Workers' Compensation and third party lawsuits. As you can imagine, there is also an interplay between Workers' Compensation and possible No Fault Benefits, New York State Disability Benefits, Social Security Disability Benefits, and various disability pensions to which an injured worker may be entitled. To sort out your rights and responsibilities it is always a good idea to consult with an attorney to make certain that you receive all the benefits to which you may be entitled.

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