

GEORGIA WORKERS' COMPENSATION

Explanation of Basic Procedures

A. Initiating Claim

1. Accident must arise out of, and in the course of, employment (O.C.G.A. § 34-9-1).
 - a. "Arising out of" means what the employee is doing is related to work;
 - b. "In the course of" means when the employee is where he is expected or supposed to be;
 - c. Individual must be employee, not independent contractor. (Note: Employees of subcontractors may be covered).
2. Notice -- Employee must tell the employer of incident/accident as soon as practicable after the injury (O.C.G.A. § 34-9-80).
 - a. If no verbal report within thirty (30) days, written notice must be given (O.C.G.A. § 34-9-80; 34-9-81).
 - b. If no verbal or written notice is given, no compensation allowed.
 - c. Employee can obtain compensation if the employer knew of the accident.
 - d. "Constructive notice" -- if the employer should have known (by the employee's absence, wearing braces or bandages, or by behavior such as showing pain or limping).
 - e. Notice to the employer = notice to the insurer (O.C.G.A. § 34-9-123).
3. Filing of claim -- Claim must be filed within one (1) year of the injury date, disability date or last remedial treatment provided by employer (O.C.G.A. § 34-9-82).
 - a. If employer does not have panel, any medical treatment employee obtains will be deemed to have been provided by the employer;
 - b. Employee may "file" claim by filing form WC-14 with State Board of Workers' Compensation.

4. Investigation of claim -- Employer has twenty-one (21) days from date of knowledge of claim to pay benefits or to controvert (deny) claim (O.C.G.A. § 34-9-221(b)).

a. Accept claim by paying income benefits and paying on weekly basis;

b. Deny claim by stating reasons for denial on either subsection "C" of WC-1 or WC-3, filing denial with State Board of Workers' Compensation and sending copy to all parties and medical providers who have treated the employee (Board Rule 61(b)(4)).

5. Medical Only Claims -- Payment of medical bills is not equivalent to accepting claim. It may, however, extend statute of limitations.

B. Insurance Coverage

1. Employer, with three (3) or more employees, has the obligation to insure payment of benefits by either obtaining insurance or qualifying with Board as self-insured (O.C.G.A. § 34-9-121; 34-9-127).

2. Employment -- If the individual is your employee (including casual employees or "day labor), and not an independent contractor, then he is a covered employee (O.C.G.A. § 34-9-1(3)).

a. Does not apply to legitimate independent contractors (O.C.G.A. § 34-9-2(e)(1-3)).

b. Corporate officers may "opt out" of coverage as employee (O.C.G.A. § 34-9-2.1).

c. Partners and sole proprietors must "opt in" (O.C.G.A. § 34-9-2.2).

3. Statutory employment -- Subcontractors' employees (not the subcontractor himself unless he has "opted in" under his own coverage) may be covered employees if engaged in same subject matter of contract as your company and if the injury occurs on premises controlled by you or on which you are working (O.C.G.A. § 34-9-8).

a. "Premises" of employment may include public roadways if the work involves transportation;

b. "Premises" would not include subcontractor's own shop.

C. Evaluating Compensability

1. Notice -- Did employee provide actual notice or should employer have known (constructive notice)?

2. Does employer agree that injury arose out of and occurred in the course of employment?
3. Is there any reason why income benefits and medical should not be paid?
 - a. Employee failed drug test (O.C.G.A. § 34-9-17);
 - b. Injured while involved in horseplay or fight unrelated to work (O.C.G.A. § 34-9-1);
 - c. Significant misrepresentation of pre-injury condition (e.g., lying about prior back injuries and this claim is for a back injury);
 - d. Employee going to or from work in personal vehicle;
 - e. Injury was personal to employee (idiopathic) (e.g., employee fainted and fainting was not caused by work strain or injury made worse by work conditions) (O.C.G.A. § 34-9-1(4)).
4. Repetitive motion injuries are compensable under the Georgia Workers' Compensation Act and are treated as continuous trauma injuries. Date of accident can be either the date the employee seeks medical treatment or the first date of disability.
5. Occupational disease -- A disease which arises from exposure at work Employee must prove (O.C.G.A. § 34-9-280):
 - a. Direct causal connection between work and disease;
 - b. Disease followed as natural exposure;
 - c. Disease is not something employee had substantial exposure to outside of work;
 - d. General public not exposed to it as ordinary disease of life; and
 - e. Disease had origin at work.
6. Hernia -- Employee must prove all of the following (O.C.G.A. § 34-9-266):
 - a. Sudden injury resulting in hernia;
 - b. Hernia appeared suddenly;

c. Was accompanied by pain;

d. Immediately followed accident;

e. Did not exist before accident.

7. Psychiatric claims -- Must accompany a physical injury. No "stress" claims.

D. Payment of Income benefits

1. Pay income benefits within twenty-one (21) days and file WC-1 with subsection "B" completed (or WC-2) within twenty-one (21) days (O.C.G.A. § 34-9-221(b)).

2. Amount of compensation -- 2/3 of average weekly wage up to maximum amounts:

a. Temporary total -- if totally disabled;

b. Temporary partial -- if partially disabled (compare pre-injury wage with post-injury wage and pay 2/3 of difference up to maximum).

BENEFIT	7/1/99	7/1/97	7/1/96	7/1/94	7/1/92	7/1/90	7/1/86	7/1/85	7/1/83
TTD	350.00	325.00	300.00	275.00	250.00	225.00	175.00	155.00	135.00
TPD	233.33	216.67	192.50	192.50	175.00	150.00	117.00	104.00	80.00
DEATH	100,000	100,000	100,000	100,000	100,000	65,000	65,000	65,000	32,500
FUNERAL	7,500	5,000	5,000	5,000	5,000	5,000	5,000	5,000	1,500.00

3. Calculating average weekly wage -- Must provide information as soon as possible on gross wages, including tips and other benefits.

a. Thirteen (13) weeks of wages immediately preceding injury (averaged out then multiplied by 2/3 and compared to maximum) (O.C.G.A. § 34-9-260(1)).

b. If employee did not work substantially the whole of thirteen (13) weeks, is there a similar employee who did (i.e., someone doing the same job and earning same wage rate)? If so, use similar employee wages (O.C.G.A. § 34-9-260(2)).

c. If no similar employee, use contract rate (hours per week employee was hired for multiplied by hourly rate) (O.C.G.A. § 34-9-260(3)). (Note: This is assumed to be 40 hours unless contrary appears. Board Rule 260).

E. Denying claim

1. Insurer files form WC-1 subsection "C" or WC-3 with State Board of Workers' Compensation stating reasons why income benefits and/or medical will not be paid (O.C.G.A. § 34-9-221(d)).

2. Medical only claims -- Where no income benefits have been paid, claim has not been accepted as compensable. Payment of medical here can be considered a gratuity.

3. Changing your mind -- If income benefits are being paid, insurer can controvert within sixty (60) days of first income benefits payment. Must first pay all benefits due before controvert. May deny claim after paying more than sixty (60) days if denial is based upon newly discovered evidence (O.C.G.A. § 34-9-221(h)).

F. Payment of Medical

1. Employer liable for medical costs for all procedures designed to effect a cure, provide relief or restore the employee to gainful employment (O.C.G.A. § 34-9-200(a)).

2. Who treats the employee -- Employer must maintain a list (panel of physicians) at work in a place accessible to employees (O.C.G.A. § 34-9-201(b)).

a. List must contain:

1. One orthopedist;

2. One minority (of any speciality and can be orthopedist);

3. No more than two (2) industrial clinics;

4. Must have at least four (4) different groups or practices (four (4) doctors from one group count as one)
 5. Hospitals cannot be an authorized doctor and should be used only in emergency situations. (O.C.G.A. § 34-9-201(b)(1)).
- b. May use instead of standard panel of physicians:
1. Workers' compensation managed care organization (WC/MCO) but must post P3 panel advising employees that they are covered by WC/MCO (O.C.G.A. § 34-9-201(b)(3));
 2. Conformed panel -- list of at least ten (10) separate doctors or groups of doctors (O.C.G.A. § 34-9-201(b)(2)).
- c. Advising employees of panel
1. Employer must make sure that employees understand panel; and
 2. Are given appropriate assistance in contacting doctors (O.C.G.A. § 34-9-201(c)).
- d. Using panel
1. Make sure employees know of panel before injury;
 2. Allow employee to choose doctor from panel;
 3. If necessary, help arrange or take employee to doctor;
 4. Tell employee that if going to doctor not on list, then those expenses will not be paid;
 5. Tell employee that in case of emergency, go to hospital but after emergency is over, go back to panel authorized doctor;
 6. If employee does not like first doctor he chose, he can choose another from list but any other changes must be approved by the employer/insurer or State Board of Workers' Compensation;

7. Authorized physicians may arrange for referral for specialized care but subsequent physician (one who receives referral) may not arrange for other referrals.

(Note: recommend using a written acknowledgment form, signed by employee and placed in personnel file.)

3. Bill of Rights -- Workers' Compensation bill of rights must be posted to explain rights and responsibilities of employer and employee (O.C.G.A. § 34-9-81.1).

4. Medical bills paid within 30 days - Provider must provide, free of charge, copy of record, office note, admission summary, discharge summary, or diagnostic treatment results (any record supporting the bill) along with the WC20, UB92 or HCFA 1500 form.

5. Mileage Reimbursement - paid to the claimant upon submission of mileage showing date incurred, medical provider seen and amount of roundtrip miles. Paid within 30 days at 28 cents per mile.

G. Subsequent Injury Trust Fund

1. Purpose -- To encourage employment of persons with disabilities by protecting employers from excess liability for work-related injuries when preexisting impairment either causes subsequent injury or makes subsequent injury worse (O.C.G.A. § 34-9-350).

2. Employer Knowledge -- Employer must show knowledge of prior impairment before work injury occurs and have made judgment that previous permanent condition is likely to be a hindrance to employment (O.C.G.A. § 34-9-361). Written knowledge is best.

3. Filing claim -- Must file Notice of Claim within seventy-eight (78) weeks of injury or within seventy-eight (78) weeks of payment of benefits, whichever is latest (O.C.G.A. § 34-9-362).

4. Americans with Disabilities Act -- Nothing inconsistent between SITF and ADA.

a. Employer may ask questions post-hire;

b. Information should be restricted to those with a need to know and cannot be used for discriminatory purposes.

5. Advantages to SITF -- Can save the employer large sums of money in future premiums as employer's liability is limited by reimbursement from Fund after threshold payment levels have been reached (O.C.G.A. § 34-9-360).

H. Suspension of Income Benefits

1. Actual return to work -- Insurer may suspend immediately upon return to work.

a. No restrictions -- if employee has no restrictions, no temporary partial benefits are due;

b. Restrictions -- Compare pre-injury average weekly wage with post-return to work wages and pay 2/3 of difference up to maximum.

2. Release to return to work without restrictions without actual return to work.

a. Insurer files form WC-2 with State Board of Workers' Compensation (attaching normal duty release) (Board Rule 221(i)(4)).

b. Insurer pays additional ten (10) days notice (Rule 221(1)(1)).

3. Release to return to work with restrictions (O.C.G.A. § 34-9-221; 34-9-240).

a. No automatic suspension of benefits;

b. Employer must provide suitable light duty (restricted duty employment);

1. Provide job description to doctor and request approval (must send a copy to the employee at time sent to doctor);

2. If approved, offer job by using form WC-240.

4. WC-240 Return to Work Offer (O.C.G.A. § 34-9-240)

a. Serve WC-240 with job description attached on employee and counsel at least ten (10) days before return to work;

b. Send copy of WC-240 to State Board of Workers' Compensation;

- c. Refusal to return to work -- If employee does not return to work at time required on WC-240, suspend by filing WC-2 (with WC-240 attached) with State Board of Workers' Compensation;
- d. Attempt to return to work -- Employee may try job for fifteen (15) business days to see if suitable. If, for any reason, employee does not finish fifteen (15) days, must put employee back on benefits;
- e. Insincere effort to perform light duty work -- After putting employee back on benefits, employer may seek hearing to suspend employee's benefits.
- f. Illegal Aliens - if already on benefits, use WC240 to offer actual job approved by the treating physician and require the claimant to prove lawful status prior to RTW. May unilaterally suspend per the WC240 when the claimant cannot RTW.

I. Permanent Disability (Impairment) Ratings

1. This rating is based upon permanent impairment from injury.
2. Rating must be issued/approved by authorized treating physician based upon *American Medical Associations' Guide to Permanent Impairment*, 4th Edition (O.C.G.A. § 34-9-263(d)).
3. Formula for payments -- Percentage rating is multiplied by number of weeks in code (see chart below); result is the number of weeks PPD is to be paid and then, this number is multiplied by TTD rate.

34-9-263 PERMANENT PARTIAL DISABILITY ("PPD")

(Sometimes referred to as "impairment rating").

Based upon reading given by Authorized Treating Physician in accordance with current AMA Guidelines. Dollar value based upon formula:

Number of weeks shown in 34-9-263 x % rating = Number of weeks PPD is to be paid.

Number of weeks to be paid x TTD rate = Total PPD entitlement.

Number of Maximum Weeks Per Body Part Loss:

Body Part Maximum Weeks Body Part Maximum Weeks

Arm 225 Little Finger 25

Leg 225 Great Toe 30

Hand 160 Any Toe other than the great toe 20

Foot 135 Loss of hearing, traumatic

Thumb 60 One ear 75

Index Finger 40 Both ears 150

Middle Finger 35 Loss of vision of one eye 150

Ring Finger 30 Disability to the body as a whole 300

J. Settlements

1. Permitted but not required by State Board of Workers' Compensation.
2. Must pay employee more than that to which he is already entitled.
3. May close medical after a certain, defined period after settlement approval or, in limited circumstances, upon approval of settlement.
4. Employer may require employee to resign as a condition of settlement, but the agreement to resign cannot be in settlement submitted to Board.

K. Board Forms (of significance to employers) -- The form number is located at the bottom of the page, centered and in bold type.

1. WC-1 -- First Report of Injury

- a. Must be completed by employer immediately upon knowledge of injury (Rule 61(b)(1));

- b. Must be filed within twenty-one (21) days of disability (Rule 61(b)(1));
 - c. Form itself is not evidence. May not be used as evidence at any hearing.
2. WC-6 -- Wage Statement -- Used in calculating average weekly wage for payment of TTD, TPD and PPD.
- a. Recommend completing on every claim;
 - b. Gross wages for thirteen (13) weeks prior to injury.
3. WC-14 -- Notice of Claim/Request for Hearing
- a. If "Notice of Claim" box is checked, no action is required;
 - b. If "Request for Hearing" box is checked, immediately notify insurer.
4. WCP1, P2, P3 -- Panel of Physicians
- a. Form is generally provided to you by insurer;
 - b. Post in a conspicuous location (i.e., employee break room, next to time clock, etc.);
 - c. Tell employees about panel and, if possible, have them sign acknowledgment form.
5. WC-102 -- Request for Production of Documents
- a. Need not be any issue for hearing or litigation pending;
 - b. Must provide documents requested within thirty (30) days or be penalized with assessed attorney's fees;
 - c. If insurer is to respond, send documents to insurer as soon as possible.
6. WC-102(g) -- Motion Form

- a. Purpose of motion will be on form;
 - b. Must respond within fifteen (15) days;
 - c. Advise insurer and/or counsel of receipt of motion immediately.
7. WC-200(a) -- Change of Physicians by Consent -- use when employer and insurer have agreed with employee to change to a doctor not on the panel.
8. WC-200(b) -- Request to Change Physicians
- a. This form requires a response within fifteen (15) days;
 - b. Send to insurer immediately upon receipt.
9. WC-240 -- Light Duty Return to Work Offer (see previous discussion)
10. WC-243 -- Reduction in Benefits (O.C.G.A. § 34-9-243)
- a. Used to take credit for money paid by salary continuation plan, unemployment or disability plan;
 - b. Advise insurer of other income replacement payments made;
 - c. Determine percentage of premium paid by employer;
 - d. Multiply percentage of premium paid by employer against weekly benefit received under plan;
 - e. Determine period of payment;
 - f. Take credit for amount paid weekly against amounts due weekly for TTD or TPD; and
 - g. File form with State Board of Workers' Compensation at least ten (10) days prior to hearing.

11. Notice of Hearing -- immediately notify insurer and retain counsel within twenty-one (21) days of hearing notice being issued (Board Rule 102(1)(3)).

Disclaimer: The reader is cautioned to use extreme care in applying the legal principles discussed in these articles. Competent legal advice should always be obtained to properly apply the relevant law to the specific facts of any case.