

# Colorado Workers' Compensation Guide

Claiming and Collecting Benefits  
for Workplace Injuries

2616 W. Alamo Avenue • Littleton, CO 80120  
Phone (303) 683-5033 • Fax (303) 558-4269

*Disclaimer*

This Colorado workers' compensation guide is not intended to serve as a replacement for legal counsel or representation. The Babcock Law Firm, LLC, a Denver workers' compensation firm, represents injured workers across Colorado and provides this complimentary guide as an educational resource for its website visitors and prospective clients.

## Table of Contents

### Part I

Introduction – Reporting an Injury and Obtaining Benefits.....	5
Reporting an On-the-Job Injury and Obtaining Care.....	6
Workplace Injuries Involving Pre-Existing Conditions.....	10
How are Problems in Workers' Compensation Claims Handled? .....	11
Finding the Right Colorado Work Injury Attorney .....	14
How You Can Help your Attorney Win Your Case .....	17

### Part II

Introduction – Benefits and Coverage .....	21
Colorado Workers' Compensation Benefits .....	22
Colorado Workers' Compensation Benefit Limitations.....	26
Benefits for Independent Contractors (truck and cab drivers) .....	28
Colorado Workers' Compensation Jurisdiction.....	29
Types of Workers' Compensation Insurance in Colorado .....	32
“Bad-Faith” Lawsuits.....	34
About The Babcock Law Firm LLC.....	37



# Part I

## Reporting an Injury and Obtaining Benefits

Effectively navigating the workers' comp system helps you obtain the needed benefits to treat your injuries and compensate you for lost wages and disability

We don't go to our jobs day in and day out thinking about what we would do in the event of an injury - we're too busy thinking about our lives and other pursuits. If an on-the-job injury does occur and requires medical attention and maybe even time off, it is our sincere hope that our employers will understand and help us get back to normal as soon as possible.

But reality is a much different story that can prove frustrating for injured workers. Dealing with your employer's insurer can be a cumbersome process without the proper knowledge and/or representation. Many good working relationships have fallen victim to this process.

Fundamentally speaking, your employer and their Colorado workers' compensation insurer are businesses who have a variety of obligations and needs to meet. Part of a human resource director's, office manager's or risk manager's responsibility is to minimize risks associated with workplace injuries...which sometimes doesn't work to your benefit.

While it's not the optimal situation, you may have no choice but to engage your employer and their insurer in the legal system. In the end, you cannot allow yourself to be left holding the bag for an injury that occurred in the course of your employment.

### What do I do if I'm injured on-the-job?

Each year, more than 30,000 workers' compensation claims are filed in Colorado. If you're one of them, this guide is designed to serve as a one-stop resource for helping you navigate the system. It is not intended to replace legal representation but rather, serve as an easy-to-use guide for helping you understand your employer's obligations and the basic process of going about obtaining your rightful benefits.

Continue reading to learn more about **what you should do if you're injured on-the-job**, what to do if your doctor isn't providing the proper care, what to do if you're misled and even a general outline of the legal process you may have to face.

## Reporting an On-the-Job Injury and Obtaining Care

### What should I do if I'm injured on-the-job?

Getting injured is an unfortunate fact of life but if something happens during the course of your employment, there are certain steps you need to follow to ensure you receive all of the Colorado workers' compensation benefits you're entitled to.

### NOT FOLLOWING THE PROCEDURES OUTLINED BELOW COULD PUT YOUR BENEFITS AT RISK!!

First of all – if your injuries are threatening to life and/or limb, seek medical attention immediately and then notify your employer in writing.

#### Reporting your Injury

If your injuries are NOT life or limb threatening, verbally notify your supervisor and ask if there are any internal accident reporting forms you need to complete. You are also required to notify your employer in writing within four working days of the injury.

Even if your employer says written notification isn't necessary,  
do it anyway and keep a copy for your records.

If your supervisor doesn't accept written notification,  
go to their supervisor or your company's human resources department.

Colorado workers' compensation laws stipulate that you must provide written notification of your injury within FOUR working days. Your employer can seek to reduce your compensation for each day past four days...and it's awfully difficult to prove to a judge that you reported your injury in a timely manner if it's only done verbally.

Include the following on your brief written statement:

- How the injury occurred
- When the injury occurred
- Where the injury occurred...and
- What body parts were affected

Your statement only needs to be three or four sentences long – just enough to provide a few specifics of your injury.

In addition to reporting the injury to your employer, you will also need to file a claim with the Colorado Division of Workers' Compensation (DOWC) within, in most instances, 2 years of your injury. The "statute of limitations" is 3 years for some injuries or can be extended beyond the standard 2-year limit if it can be proven you had a valid reason for not being able to file.

Nevertheless, filing this claim within 2 years helps ensure you will not see a sudden stop in your benefits if your case goes on that long.

## Designating a physician (employer)

Once you report your non-life or limb threatening injury to your employer IN WRITING, they have some immediate obligations to meet as well – namely designating at least two physicians or two corporate medical providers – or one of each for you to choose from to go for treatment.

They can provide this information to you verbally in the beginning but they must provide it in writing within 7 business days following their receipt of your notice. This Designated Provider List must also include the name and contact information of at least one representative from the company (if self-insured) or the employer's Colorado workers' compensation insurer.

If you're not in your usual workplace and are injured, you can seek medical treatment immediately then refer to the Designated Provider List your employer is required to give you within the 7-day timeframe.

And if your injuries are life or limb threatening, seek emergency medical attention immediately. Once emergency care is no longer required, the process outlined above applies.

It's very important you only see doctors or medical providers authorized by your employer (or their workers' comp insurer) through the Designated Provider List.

All treatment must go through or be referred by this "primary physician." If you simply obtain medical treatment on your own (outside situations mentioned earlier) it may be deemed unauthorized and become your financial responsibility.

## What if my employer doesn't provide the designated provider list?

If your employer doesn't provide you with any list of authorized physicians to obtain medical treatment from, you may select an authorized treating physician on your own. The claim you file with the DOWC will initiate the compensation process with the insurer once you file it.

The agency will contact your employer's insurer with a letter asking whether they will admit liability and pay benefits or not...the insurer has 20 business days from receipt of the form to reply.

## Other employer responsibilities

After receiving your notification of injury and providing you with a list of authorized physicians, they must next report the incident to their insurer (or the DOWC if self-insured) within 10 business days of your initial report. From there, the workers' comp insurer has 20 business days to admit or deny the claim.

If they fail to do this, the claim you file with the Colorado's Division of Workers' Compensation (DOWC) will initiate the workers' comp process.

And if your injury causes you to miss three or more shifts of work, your employer must also file a report with the DOWC.

## I've heard filing a claim with the DOWC is not required but you're saying it essentially is. What's the deal?

There's often confusion as to whether an injured worker has to file anything with the Colorado workers' compensation agency if their employer follows the procedures they're supposed to. In short, you need to file a report of your injury with the DOWC to ensure you receive all of the benefits you need to treat your injuries and compensate you for lost wages.

The statute of limitations for a workers' compensation claim – or the maximum time after an event that legal action can be initiated – is two years in most cases. The only way for this NOT apply to you is to file a claim with the DOWC.

Even if your employer follows all of the procedures they're supposed to, your case can be closed on the two-year anniversary if your treatment lasts longer than two years (or 3 in other cases). This issue gets awfully confusing for injured workers who do not obtain legal representation...if your treatment only lasts a year or so, then no problem.

But considering that it's difficult to predict how long your treatment will last, it's in your best interest to be ahead of the curve and file the claim with the DOWC. Doing so will ensure you will receive benefits for as long as you need them.

## What if my injury occurred over a period of time and not as a result of a specific event?

Injuries like carpal tunnel or thoracic outlet syndrome occur over a period of time rather than from a specific event. If performing your job causes a chronic ailment that prevents you from fully performing your job, you have an occupational disease.

If you have a condition like carpal tunnel syndrome or some other occupational disease, you are entitled to the same benefits as someone who is injured from a specific accident.

Unlike injuries where the time for reporting or filing a claim begins at the date of the accident, occupational diseases begin when you knew or should have known you had a medical condition caused by a work-related action.

Therefore, once you know you have an occupational disease that was caused by your job, report it to your employer so you can obtain treatment. Beyond that, the workers' compensation process pretty much works like detailed above.

Reporting your injury is only the first step in ensuring you obtain the full amount of medical and wage loss benefits afforded to you under Colorado law.

Having any pre-existing conditions in connection with your injury though changes a few things. Continue reading in the next section to learn how these situations may apply to your case

## Workplace Injuries Involving Pre-Existing Conditions

What if my injury at work caused a pre-existing condition to reappear or get worse?

Some workplace injuries do not simply create new conditions, they exacerbate other pre-existing ones. Prior back pain, bad knees can come back out of nowhere if you sustain a slip, fall or some other calamity while at work.

Fortunately in most cases, pre-existing conditions are covered under Colorado workers' compensation if a workplace injury aggravated the condition and caused you to seek additional or new treatment.

Unfortunately though, some employers try and deny coverage for pre-existing conditions and contend that since the condition was already a problem, it shouldn't be covered under the workman's comp claim. One instance where their argument does have merit however is when a condition was caused by a non-work related injury.

But if a pre-existing condition was aggravated or caused to re-appear as a result of a workplace accident, it's covered under workers' comp statutes in Colorado.

### Some ideas to consider when thinking about pre-existing conditions and workplace injuries

- Was your pre-existing condition bothering you before your injury at work?
- Did your injury cause increased pain?
- When your injury occurred, did any strange noises or feeling emanate from the area of your pre-existing condition?
- Has pain migrated to another location in the same body part affected by the pre-existing condition?
- Have you experienced increased limitation in your range of motion after the injury?

If you answered yes to any of these questions, then treatment for your pre-existing condition is covered under workers' compensation in Colorado. When arguing these kinds of cases, it's important to also consider how the injury is affecting your treatment.

If there is an increased need for treatment vis-à-vis your pre-existing condition, then that treatment is covered as well.

In the following chapter, learn about different methods of **resolving disputes in workers' compensation claims**. These avenues generally require an experienced workman's comp attorney who's quite familiar with the litany of statutes in Colorado. But these methods of obtaining benefits can help you know what to expect when pursuing a workman's comp claim.

## How Are Problems in Colorado Workers' Compensation Claims Handled?

What you can expect to happen when situations arise that prevent you from obtaining treatment or receiving compensation for your workplace injuries

As you can see from the prior chapter, there are literally hundreds of scenarios that can crop up and prevent you from either obtaining the necessary treatment or receiving all of the compensation entitled to you under the law.

Without the assistance of a qualified workers' compensation attorney in Colorado, it's extremely difficult to know if you're being treated properly by your employer's workers' comp insurer – much less deal with any problems in an effective manner.

Fully understanding the inner workings of the workers' comp system requires a person to spend untold amounts of time and resources. You would literally need to make it a full-time job and even then, it could prove intimidating when dealing with insurance companies and their attorneys.

Having a dedicated workers' compensation attorney in your corner can go a long way toward obtaining your rightful workers' compensation benefits. Insurance companies will then become more receptive to your claim as they will see they're not just dealing with someone who is largely unaware of how the system works and the rights afforded to injured workers under the law.

Continue reading to see how attorneys representing injured workers in Colorado go about dealing with the various situations outlined in the previous chapter.

This is not a chronological list of events but rather an outline of what courses you can expect a workers' compensation attorney to take to help resolve your case.

### Consultation with insurers and their representatives

The first thing a Colorado workers' compensation attorney will do after reviewing your case is to consult with the insurance company's adjuster in-person or over the phone. Perhaps the adjuster didn't do something properly and simply needs to be reminded of the law. Or maybe they do not have complete information and that's causing your claim to be held up.

Either way, many workers' compensation claims are settled amicably over the phone – both sides of the case generally prefer this route...it's quick, it's painless.

In some instances, consulting with an insurance adjuster or the insurance company's attorney on the

phone will be enough to settle the case outright. You and your attorney will need to decide if a settlement in this regard will be sufficient to meeting your needs.

## Voluntary out-of-court dispute resolution

If there are other outstanding issues that cannot be handled through a couple of phone calls, your workers' compensation attorney may look at some out-of-court options to help resolve your case.

Known as mediation, different parties to a workers' compensation claim are provided with a confidential, collaborative forum to resolve differences. Judges and legal assistants trained in mediation help foster communication, clarify issues and help both sides assess their options. No ruling is handed down by these "mediators." They don't tell people how to resolve their differences – that's up to them!

This completely voluntary process can also be called a settlement conference. They're generally used to fully settle a case rather than resolve one particular issue.

Remember, participation in these conferences is completely voluntary. The other side does not have to honor your request to talk and resolve issues in this type of forum. If the workers' comp insurance company refuses to participate, there's nothing any legal authority can do about it.

But if they do agree to a settlement conference, you need to be prepared to fully settle your case.

Mediation sessions or settlement conferences begin as a joint meeting where the mediator explains the process and each party makes a short opening statement and gets the opportunity to ask clarifying questions. After that, each party meets with the mediator separately in what's known as a caucus to discuss the case. In many cases, the mediator will relay settlement offers and counteroffers between each of the parties.

These sessions are offered by the Office of Administrative Courts and the Division of Workers' Compensation for Colorado workers' compensation cases free of charge.

## Formal hearings in a court

If you and your workers' comp insurance company fail to reach an agreement in a settlement conference or your Colorado workers' compensation attorney doesn't feel mediation will help resolve your case, a formal hearing can be requested.

These hearings are formal legal proceedings in which an administrative law judge decides what benefits, if any, must be paid among other issues. Each side will present evidence and call witnesses in a court type setting. Rulings handed down by the judge are binding unless either side decides they want to pursue an appeal.

If a judge renders a decision that you feel isn't based upon the law and the facts of your case, an appeal can be filed within 20 days or within the time-frame provided by the judge. Both parties will be notified and each will have to file a 'brief' – which in your case, a 'brief' may be an explanation of why you disagree with the judge's order.

One of two things will happen when both parties file their brief – either the administrative law judge will write another decision based on your appeal or the case will be referred to the Industrial Claim Appeals Panel for review...the panel has 60 days from when they receive your file to render its decision.

If you disagree with this panel's decision, you can appeal to the Colorado Court of Appeals within 20 days and from there to the Colorado Supreme Court. Keep in mind, the Supreme Court can refuse to hear your appeal if they so desire.

Going all the way to the Colorado Supreme Court is certainly an extreme action and not very common. Most of the time, cases are resolved well before going that far.

If you experience problems in obtaining your rightful workers' compensation benefits or you feel you're not being treated right by the insurance company, this is what you can expect to happen in a general sense. Each case is unique – some may only require a phone call to resolve while others may require court action.

Review your case with a licensed **workers' compensation attorney in Colorado** to understand the complexities and the process of obtaining your rightful benefits.

In the mean time though, learn the proper steps of **finding the right workers' compensation attorney** and what to look for when evaluating various legal options available to you.

## Finding the Right Colorado Work Injury Attorney

### How can I find quality legal representation regarding my work injury?

Whether your work injury occurs all of a sudden or over a period of time, finding help in obtaining your full workers' compensation benefits can be a challenge. Most of us don't wake up every day thinking we'll need to find an attorney, or doctor or any other unique service we don't use day-to-day.

Much of the time though, recovering medical and wage loss benefits from a work injury requires the assistance of someone with the experience in navigating the system and dealing with employers and insurers in a legal sense.

You can do a lot to understand the system yourself but not having experienced representation with you can likely hinder the potential benefits you ultimately receive.

Continue reading to learn more about how you can find a qualified Colorado work injury attorney, what kinds of qualifications you should look for and what kinds of questions you should ask when interviewing a potential attorney for your case.

### Where can I find a good Colorado work injury attorney?

There are many ways you can find a good injury attorney to represent you in your case. Continue reading for five common ways you can go about this and be open to different ways of finding the right one... sometimes, good things can come from unexpected places.

#### Family, friends, co-workers and acquaintances

One great way to find a good work injury attorney is to ask other people you know. This gives you a first-hand account of how the attorney works and what your friend thinks of them.

#### Online Directories, Search, Social Networks and the good old fashion yellow pages

Looking for attorneys through online searches or the phonebook is the perhaps the first place you instinctively look. Many lawyers have their own websites and generally are listed in legal directories. LegalZoom, NOLO and Red Law List are a few legal directories you can check out. Or go to Google and type in a search for 'work injury attorney Denver' or 'Colorado workers' compensation help' or something like that.

You can also check your favorite social networking site like Facebook and even look in local search/review sites like Yelp, Google Local and so on.

And of course, you can refer to your local phonebook as well.

## Other Attorneys

Perhaps you've got a neighbor, or a friend of a friend who is an attorney. Remember, not all lawyers are the same. One who does criminal law won't be much help in a workers' compensation case. But they probably know an attorney who does. Attorneys refer clients back and forth all the time so if you know of one lawyer, chances are they know someone who can handle your case.

## State/Local Bar Association

You can also contact your local or the Colorado Bar Association to find a good work injury attorney. Each bar association is different and will list attorneys in different ways – some may just list all attorneys while others will only list those with a certain amount of experience. Before you choose any though, verify the criteria the bar association uses in developing their list.

## I've got a few names so where do I go from here?

Once you get a list of 3-5 attorneys, it's time to meet with them in-person and see which one will best serve your needs. Most attorneys do not charge for an initial consultation and if they do, you should avoid them.

When you meet with your prospective attorney, be sure to have all documentation related to your work injury and case. These items include police reports, medical records, wage information and any communication between you and the insurance company.

Helping your attorney by providing them with all the information you have is a critical component of making sure your case goes smoothly.

## What kinds of questions should I ask the attorney?

During the interview, you will want to ask specific questions about their experience.

Get answers to the following:

1. How long have you been practicing workers' compensation law?
2. How much of your practice is dedicated to work injury cases?
3. Do you represent plaintiffs or defendants?

If they're an attorney who currently represents defendants like an insurance company, you will want to scratch them off your list...their experience, mindset and interests are probably too closely linked to the same people you're trying to obtain benefits from.

However, if they have prior experience in representing insurance companies, it can prove to be a valuable benefit to your case. Since they've worked for the "other side," they probably have special insights into how to build the strongest case.

4. Who at the firm will handle the case? Will there be any other attorneys at the firm handling your case?
  
5. What's your record? What's your win/loss ratio and average amount of damages awarded?

Once you hire an attorney for your case, you're not done. Be sure you have a clear fee agreement in writing and stay in touch frequently.

Besides that, you should learn as much as you can about benefits, jurisdiction, reporting an injury and what happens if you run into problems obtaining your workers' compensation benefits.

The following chapters contain this along with information on **how you can help your attorney effectively represent you**. Providing them with all of the information you can again be quite helpful in moving your case along quickly.

## How You Can Help Your Attorney Win Your Case

### If you hire a workers' compensation attorney, help them help you obtain full treatment and benefits for your injuries

As attorneys representing injured workers, our main responsibility is to do everything we can to get the medical treatment and maximum amount of wage loss benefits prescribed under the law.

But in order to fully maximize the amount of benefits you ultimately receive, we depend on our clients to provide us with the information we need to fully represent your case. There are several things you can do to aid us in this effort.

As you may know, insurance companies, corporations, government entities and others have personnel carefully working on their side to try and decrease the amount of benefits you ultimately receive. That's why it's important you do the following to ensure your case isn't derailed or benefits reduced.

The following suggestions are based on years of experience representing both sides in a workers' compensation claim. When approaching your case, keep the following in mind.

### Document everything and have copies

Since insurers and companies have limited communication directly with you, they rely heavily on medical records to determine the amount of compensation you're owed. Therefore, your records need to be complete, accurate and available to us.

Do your part by making sure every injury, condition or medical problem connected with your case is included in your medical records. If they're not, insurers will question if the condition is connected with your work injury. Be sure you communicate all problems clearly to the doctor and provide detail on what your symptoms are and which body parts are affected. And be sure you clearly communicate with your doctor how your injuries are affecting your daily life – ability to work, sleep, perform daily chores at home, etc. – and be sure this is included in your records.

This applies to treatments as well – insurers will only pay for treatment related to your claim. If it's not recommended by a medical provider IN WRITING, it will most likely not be paid for. Every treatment connected with your injury must be carefully documented...that includes EVERYTHING (over-the-counter medications, slings, bandages, gym membership in connection with an ordered exercise program, massage therapy and more)

Your medical records need to reflect ALL recommended and performed treatments. If you have any gaps in your treatment, there needs to be a reason why. If you do have gaps in your treatment and they aren't documented as to why, insurers will either assume you got injured again or are trying to "game" the system.

Besides medical treatment, you also qualify to receive wage loss benefits if you missed work because of your injury. If you do have to miss work because of your injuries, it needs to be clearly stated in your medical records that a doctor ordered you to rest or imposed restrictions preventing you from performing your regular job duties. Your employment records must reflect this as well.

Remember too that you may incur other expenses related to your injury. Workers' compensation entitles you to be paid for ALL losses you incur. We cannot seek compensation for something we don't know about or find out about much later. Whatever the incurred costs (...including travel costs), maintain receipts and careful records of the expense so we can be sure you're compensated for it.

## Watch what you say and do

Besides good documentation, you also need to be very careful about what you say and do. Things you say or are seen doing can affect the ultimate outcome of your case, perhaps even derail it completely.

### Watch what you say

That's one reason why you should never speak with anyone from an insurance company. Adjusters and investigators are trained to build a rapport with you and gain your trust. They're not just being friendly but are likely trying to get you to say something that will allow them to challenge parts of your case or even the entire thing.

Always remember, no matter how nice an insurance adjuster or investigator seems a big part of their job is to pay you the absolute minimum.

Continuing on this theme, you should only discuss medical issues with your doctors and healthcare providers. Nothing looks worse to a judge and jury than a statement that reads "patient is stressed that she will not get a large settlement for her injuries." Also, your doctor's perception could affect the treatment you receive if they believe your only goal is to obtain a large recovery.

We understand the desire to discuss your situation with someone...it's natural to want to talk about something that's having such an impact on your life. But limit your conversations to close friends and family in the privacy of your home. Always be aware of where you are and who is around when discussing your case.

And whatever you do, don't brag about your case or any settlement. If the other side finds out you're bragging about your case, it brings into question the legitimacy of your claim and whether your injuries are as severe as you make them out to be. If you go around saying certain things, a judge will begin questioning your motivations...which is what you don't want of course.

## Watch what you do

Another way the other side may try and reduce your claim is surveillance. It's in fact pretty common so you can be sure someone will be watching you at some point during your case.

Many medical conditions brought on by workplace injuries come and go. Some days will be better than others. Therefore, one day you may feel like going fishing or doing yard work. On others, you will hardly feel like doing anything. If the insurance company gets footage of you doing these kinds of activities on your 'good' days, they will ask your doctor, a judge or jury to compare your medical file detailing the 'bad' days to whatever the surveillance footage shows.

You can try to explain the footage is showing you on one of your 'good' days but the damage will be done.

And don't think surveillance is limited to private investigators. Co-workers, neighbors, doctors and even friends can be asked to testify on your activities and their observations.

In the end, you are responsible for many aspects regarding your workers' compensation claim. While our team of workers' compensation attorneys in Denver works tirelessly to obtain the full amount of benefits you're entitled to, we can't control everything.

You must pay careful attention to your records, receipts, actions and language. One mistake could spell disaster for your claim.

With this general outline of the workers' compensation process in Colorado, you're well on your way to ensuring you receive the benefits you need to treat your injuries and pay you for lost wages.

In **Part II**, learn more about the laws themselves – specific **benefits, jurisdiction, insurance** and what are called '**bad-faith lawsuits**' – or an additional legal action in cases where an insurance company intentionally misleads or ignores your case.

And if you've got any further questions or would like to schedule a free case evaluation, **contact Denver workers' compensation attorneys** at the Babcock Law Firm today.



# Part II

## Introduction - Benefits and Coverage

### What is workers' compensation and why was it started?

Workers' compensation is actually a type of insurance employers must either purchase from an outside insurer or obtain a "certificate of self insurance" from the Colorado workers' compensation agency. It provides medical treatment and partial wage compensation for on-the-job injuries and occupational diseases like carpal tunnel syndrome. If you're injured on-the-job, you may also qualify for permanent disability benefits.

An employer is responsible for paying all premiums for a workers' compensation insurance policy and is prohibited by law from deducting these costs from an employee's paycheck. Employers with one or more employees are required to provide this form of disability insurance under state law.

Workers' compensation was "the first great venture into social security by the people of America" according to the Rocky Mountain Law Review. It was the first social safety net in the U.S. and established well before Social Security and unemployment insurance.

Prior to workers' compensation, an injured worker had to prove negligence by his employer or a fellow employee before compensation was awarded. This is referred to as a "common-law" remedy in attorney speak.

Eventually it was determined the common law remedies were insufficient at protecting employees from on-the-job injuries. Thus, an administrative system of workers' compensation was created to shift the economic burden of a workplace injury from the worker to the industry and by extension, the consumers of that industry's products and services.

In **Part I** of Babcock Law's Colorado Workers' Compensation Guide, we explained how injured workers go about reporting an injury and obtaining their benefits. In this section, we more fully explain what those benefits are and the system by which workers are covered in Colorado and across the United States.

Continue reading to learn more about **Colorado workman's comp benefits, jurisdiction** and what are known as **'bad faith' lawsuits** , or situations where an insurance company is sued for needlessly delay or intentional misstatements.

## Colorado Workers' Compensation Benefits

### What type of benefits could I receive if I'm injured on-the-job in Colorado?

What specific workers' compensation benefits you receive largely depends on the severity of your injury, how long it takes to treat it, what care is required for the long term and whether it causes permanent impairment or not.

Most full and part-time employees who work for the state of Colorado or in the private sector are covered under this insurance from the time they start working. However, there are a few instances where someone is not eligible for workers' compensation benefits. Examples include:

- Part-time maintenance/repair workers performing less than \$2000 in work for a business in a year
- Licensed real estate agents working on commissions
- Independent contractors who perform specific jobs
- Federal and Railroad employees (subject to federal workers' comp laws)

If you're a full or part-time employee at a business in Colorado, you're in all likelihood covered under workers' compensation.

Continue reading to learn more about what these benefits are and in what situations they apply.

### Colorado Workers' Compensation Benefits

Below you will find an explanation of the various benefits workers' compensation offers. Each is covered in more detail below but the main benefits include: **medical, temporary disability, permanent disability, disfigurement awards and death benefits.**

#### Medical Benefits

Under workers' compensation law in Colorado, all medical expenses connected with an on-the-job injury are to be paid by your employer, or their workers' comp insurer to be more accurate. These benefits must be provided at no charge to the injured employee.

Medical benefits pay all reasonable and necessary medical expenses connected with an on-the-job injury – doctor's appointments, hospitalization(s), x-rays, MRIs, therapy, prescriptions and other necessary supplies...even transportation costs to and from treatment is covered (an often overlooked but important benefit).

Since the inception of workers' comp in Colorado, courts have interpreted medical benefits very broadly, including treatments one would not ordinarily consider to be connected with an on-the-job injury.

For example, an employer was required to pay for their injured worker's cancer treatment since the disease was preventing them from undergoing back surgery stemming from a work injury.

This bottom line is this – there is no time or monetary limit on workers' compensation medical benefits. They are supposed to be paid as long as there is hope for improvement in your condition, whether that only takes one visit with a doctor or the rest of your life.

### Temporary Disability Benefits

During the course of your treatment, you may have to miss work and/or your physician will restrict your job duties. If these restrictions prevent you from performing your pre-injury job and earning your pre-injury wage, you are entitled to receive wage loss or temporary disability benefits.

There are two types of temporary disability benefits: **temporary total disability and temporary partial disability benefits.**

Temporary total disability means you are completely prevented from working. They pay 2/3 of your average weekly wage up to around \$800 per week (limits change each year).

Temporary partial disability means you can still work, but in a limited role. Your employer offers limited duties within the scope of the doctor's restrictions, likely at a reduced wage. In this case, temporary partial disability benefits will pay 2/3 of the difference between your pre-injury wage and what you're receiving for the part-time or modified employment.

### Permanent Disability Benefits

At a certain point, your condition will stabilize and quit improving...your condition is not expected to improve with additional medical treatment (although you may receive ongoing medical treatment to maintain your condition). When this time comes, your permanent disability benefits will be determined.

This event is what's known as Maximum Medical Improvement (MMI). Once a doctor declares you have reached MMI, they need to determine if you're back at your pre-injury condition or whether you have permanent impairment. If you have permanent impairment, workers' compensation benefits in Colorado pay either permanent partial disability or permanent total disability benefits up to a limit.

Fundamentally speaking, permanent partial disability means you have some condition that will be a permanent part of your life but you are still able to hold down a job. Permanent total disability on the other hand means your condition is so severe that you are unable to work at all.

Most workers' comp cases in Colorado fall into the first category.

To determine the amount of permanent partial disability benefits, the doctor assigning the MMI designation refers to the American Medical Association's Guides to the Evaluation of Permanent Impairment, 3rd

Edition (Revised), or “AMA Guides” to assign ratings to parts of the body affected by the injury. They may assign an injured arm, shoulder, neck and psychological rating for example.

Doctors then take these ratings and convert them to their respective “whole person” equivalent using the appropriate tables in the AMA Guide. They then take each of these numbers and add them together to arrive at your total whole person rating.

Your permanent partial disability award can be as low as a few dollars or as high as \$150,000 – it all depends on the whole person rating. (We’ll talk a little more about limitations to these benefits in the next section)

Permanent total disability on the other hand is much more cumbersome, and for good reason. Besides factoring permanent work restrictions as a result of an injury, there are other factors that influence this decision. An Administrative Law Judge (ALJ) with the Colorado Office of Administrative Courts comes in and also looks at the injured worker’s education and experience as well as their labor market to determine if there are any jobs realistically available to the worker.

If an injured worker has limited education and experience and lives in an area with few available jobs, they are more likely to be declared permanently and totally disabled.

Permanent partial and permanent total disability awards are payable in weekly installments, a lump sum payment or a combination of the two.

### Disfigurement Benefits

If your injury causes scars and/or disfigurement exposed to public view, you may be entitled to a lump sum disfigurement award. The amount of a disfigurement award is determined by an ALJ whose determination is based on the severity and visibility of the scar.

For injuries occurring after July 1, 2007, the maximum standard disfigurement award is \$4000 - \$2000 for injuries prior to 07/01/2007...extensive disfigurement is capped at \$8000 for injuries occurring on or after July 1, 2007. In fact, disfigurement awards change each year to adjust for inflation.

### Death Benefits

If the unthinkable happens and a worker dies in an accident or as a result of their on-the-job injury or occupational disease, their surviving dependents are entitled to death benefits. Generally speaking, death benefits pay 2/3 of the worker’s weekly wage –how long death benefits last depend on the dependents’ relationship to the deceased.

- Surviving spouse – receives death benefits for the rest of their life or until they remarry.
- Dependent children (including adoptions) – receive death benefits until age 18 or 21 if they’re in school or can prove dependence on the worker.

- Others (parents, grandparents, siblings, children over 18/21) – Can receive death benefits if they can prove either partial or whole dependence at time of worker's death. Partial dependents receive benefits equal to the amount they were dependent on the worker for.

If the deceased worker has more than one surviving dependent, their benefits will be equally divided between the dependents for the period of time they are entitled to Colorado workers' compensation death benefits.

Additionally, employers are required to pay up to \$7000 in burial and funeral expenses and they are responsible for any and all medical bills connected with the injury.

Finally, even though dependents are not entitled to Colorado workers' compensation death benefits if a worker dies from a non-work related accident or illness, they can receive some benefits if the worker was receiving workers' compensation benefits at the time of their death. In this situation, a dependent can receive a portion of the benefits already awarded to the deceased worker prior to their death.

Continue reading to learn about statutory limitations to these benefits and some special circumstances that apply to independent contractors, specifically truck and cab drivers.

## Colorado Workers' Compensation Benefit Limitations

With the exception of medical benefits that pay all expenses connected with treating your on-the-job injury, there are limitations to certain other types of benefits – namely temporary disability and permanent partial disability benefits.

Benefit caps are determined by several factors but fundamentally speaking, caps depend on the impairment rating the physician assigns to you once you reach Maximum Medical Improvement (MMI). Doctors arrive at this impairment rating through a process we described in the previous section outlining permanent partial disability benefits.

Benefit caps do not apply until the doctor assigns your impairment rating but can affect what you ultimately receive in permanent partial disability benefits. For injuries occurring on or after January 1, 2006, benefit rate caps are as follows:

Doctor's impairment rating is 25% or lower - \$75,000

Doctor's impairment rating is higher than 25% - \$150,000

For injuries occurring before January 1, 2006, benefit caps are \$60,000 and \$120,000 respectively.

As we said, benefit caps do not take effect until your doctor declares you have reached MMI and assigns an impairment rating.

### Just how do these caps apply to how much I ultimately receive?

Say for example you're being treated for an injury for an extended period of time and receive \$50,000 in wage loss/temporary disability benefits. You finally reach MMI and the doctor assigns a 15% impairment rating, which may be worth an additional \$40,000 in permanent partial disability benefits.

Since you have already received \$50,000 and the cap for a 15% impairment rating is \$75,000, you will only receive \$25,000 in permanent partial disability benefits. In fact, if what you receive in wage loss benefits exceeds the cap before you even reach MMI, you will receive no permanent partial disability benefits.

Colorado workers' compensation caps can even come into play if you have to reopen your case, which you can do provided you retain the right to do so at the conclusion of your case and you're within the applicable time period for reopening. For our example, let's say symptoms stemming from your injury reappear a couple years after the insurer issues their "final admission of liability" and around four years since the initial injury.

Your impairment rating of 22% caps your benefits at \$75,000 – you received \$50,000 in wage loss benefits and an additional \$25,000 in permanent partial disability benefits.

The resurgence of your condition means you have to miss work again. But since you reached the \$75,000 cap, temporary disability/wage loss benefits will not start immediately since the workers' comp insurer will need to "offset" the permanent partial disability benefits you already received.

In the example above, wage loss benefits will not resume for 50 weeks. Insurers arrive at this number by dividing the permanent partial disability award of \$25,000 by the weekly wage loss rate of \$500 in this example.

## Benefits for Independent Contractors (truck and cab drivers)

As we stated in the beginning of this chapter, independent contractors who perform certain jobs do not qualify for workers' compensation benefits in Colorado. In most instances, they have to purchase workers' compensation insurance for themselves.

However, truck and cab drivers employed as independent contractors have to be covered by workers' compensation or an equivalent for the designation to be valid. Occupations like these require a lot of heavy lifting and driving – two areas where an on-the-job injury is more likely.

There are many reasons why a company would hire a trucker or cabbie as an independent contractor. One, they are exempt from paying state or federal taxes, social security and unemployment insurance. On top of this, they are exempt from many reporting requirements, minimum wage and overtime compensation rules.

Many truckers and cabbies in Colorado are led to believe they're not entitled to full workers' compensation benefits since they're hired as independent contractors. Employers try to cover these contractors through private occupational accident policies that are not as closely monitored by the state like regular workers' compensation policies from an insurance company are.

So if you're a truck or cab driver operating as an independent contractor, remember, you are entitled to the same benefits outlined earlier.

In the next couple of chapters, learn more about Colorado workers' compensation jurisdiction issues as well as the different types of workers' compensation insurance employers can choose to carry.

And if you've got any further questions or would like to schedule a free case evaluation, **contact Denver workers' compensation attorneys** at the Babcock Law Firm today.

## Colorado Workers' Compensation Jurisdiction

### What if I'm injured while working out-of-state?

Most of the time, it's pretty clear which state's workers' compensation laws apply in a particular situation. A resident of Denver, Colorado Springs, Pueblo, Grand Junction or any of the quaint small towns that populate our state working in the state at the time of their injury are covered under workers' compensation in Colorado.

But workers' compensation jurisdiction isn't quite so clear in other cases where an injury occurs in another state.

Many companies, especially construction firms, do business in other states...or someone living in Durango, Colorado may commute the 51 miles from their home to a job over the line in Farmington, New Mexico.

Provided you don't fall under one of the conditions we outlined at the beginning of this book, you are covered under workers' compensation if you're injured during the course of your employment – no matter where that may be.

Continue reading to learn more about how Colorado workers' compensation handles injuries where another state comes into play and what you should do to ensure you receive the benefits you're entitled to.

### So how do I know which state's laws apply in these situations?

In the beginnings of workers' compensation in Colorado (until 1957), various court cases and the Industrial Commission developed rules regarding jurisdiction since the laws passed by the Legislature contained very little on the matter.

Initially, appellate courts found that “the law of the place of contract governed” determined which state's workers' compensation laws applied. Meaning, the state where an employment contract was finalized was the state whose laws would apply in the event of an on-the-job injury.

Industrial Commission v. Aetna Life Insurance, Co. was a case where questions on jurisdiction were addressed. A resident of Colorado who was hired in the state to supervise construction projects for a company that did business across the west was killed while traveling from Wyoming to Idaho one day for work.

Stating that traveling was an “...essential part of his employment...,” the court awarded full Colorado workers' compensation death benefits to his heirs who also stated that his employment contract created protection for him out-of-state. Without this protection, the deceased's employer would have been required to purchase workers' comp insurance in every state they did business in – something that would have presented a problem no doubt.

On the other hand, just because an injury occurs in Colorado doesn't automatically mean an employee will receive workers' compensation benefits. "Substantial portion" of employment was another early theory of jurisdiction in the state that was codified in the case *Platt v. Reynolds* and remained the standard until 1957. It basically stated that an employment contract completed in Colorado, with no other ties to the state, wasn't enough to grant the injured employee workers' compensation coverage.

## Modern day standards for Colorado workers' compensation jurisdiction: Perryman test and extraterritorial provision

### Perryman test

One of the places more concrete rules for establishing jurisdiction for workers from out-of-state arose in 1957 out of the landmark *Denver Truck Exchange v. Perryman* case. In short, the "Perryman test" determines a worker's eligibility for Colorado workers' compensation benefits whose contract for hire was finalized in another state or is a resident of another state.

To qualify for workers' compensation benefits in Colorado, injured workers falling into this situation had to meet two of the following three requirements:

1. Contract of employment created in Colorado
2. Employment in Colorado under a contract created outside the state
3. Substantial employment in Colorado

Provided two of these three requirements are met, the injured worker is eligible to receive workers' compensation benefits in Colorado despite which state they are a legal resident of.

### Extraterritorial provisions

These provisions in Colorado workers' compensation laws help determine benefit eligibility for injured workers who are residents of Colorado but are injured while working out-of-state. Extraterritorial provisions in the statutes state that an out-of-state injury has to occur within six months from when the claimant left the state for it to be covered.

However, if the injured worker's only connection to the state is that their injury occurred here, they are not entitled to Colorado workers' compensation benefits. Also, the extraterritorial provision does not cover an employee whose contract for hire is from a different state.

To see this concept play out, let's examine the *State Compensation Insurance Fund v. Howington* case. A miner hired in Colorado was immediately sent to Utah for work. While the injured worker never actually worked in Colorado, his injuries were covered since they occurred within six months of his hiring and assignment to work in Utah.

Extraterritorial provisions however do require a claimant to have been physically present in Colorado at some point in time. In the case *Hathaway Lighting v. Industrial Claims Appeals Office*, a claimant who lived in Washington State and was hired by a firm in Colorado was injured while working in Oregon. Since the claimant had never set foot in Colorado, the court found he was not entitled to Colorado workers' compensation benefits under extraterritorial provisions.

While it may seem confusing to figure out which state's workers' compensation rules apply to your situation, you likely qualify to receive Colorado benefits if you meet the criteria outlined above.

Next, learn more about **workers' compensation insurance**, what your employer is generally required to have and the various ways they can obtain the necessary insurance to be in compliance with the law.

## Types of Workers' Compensation Insurance in Colorado

Employers can obtain workers' comp coverage for their employees in one of three ways

With the exception of very limited circumstances, employers in Colorado are required to maintain a current workers' compensation insurance or self-insurance policy for their employees.

They are by law prohibited from garnishing worker wages to pay for it and cannot demand an employee pay anything to have their work injury treated...premiums and all costs are the sole responsibility of the employer.

There are 3 ways your employer can obtain workers' compensation insurance in Colorado and comply with the letter and the spirit of the law. It's important to understand how your employer chooses to fulfill this important obligation.

Continue reading to learn more about these three different types of workers' compensation insurance your employer can choose from to be in compliance with Colorado laws.

### Pinnacol Assurance – Colorado's workers' compensation insurer of last resort

One of the ways your employer can obtain workers' compensation coverage and comply with Colorado laws is to apply for and pay premiums for coverage through Pinnacol Assurance, the state's insurer of last resort.

In fact, a majority of employers in the state rely on Pinnacol to cover their workers against any unforeseen on-the-job injuries. According to the most recent data from the firm, over 57% of employers or around 1.5 million employees are covered this way.

Employers are only required to pay insurance premiums to the company for coverage only. In the event of an on-the-job injury, Pinnacol is liable for any medical treatment and workers' compensation benefit payments.

### Private Corporation or mutual company licensed to offer workers' compensation insurance in Colorado

The second option your employer could choose to comply with Colorado's workers' compensation laws is to apply for and pay premiums to a private insurance company that is authorized to write policies for workers' compensation in Colorado. The process for obtaining coverage is roughly the same as it is for Pinnacol.

If your employer chooses this route, they must notify the Colorado workers' compensation agency and provide the insurer's name and address, the policy's effective date and its expiration date. The agency may require they submit a copy of the insurance contract or policy.

Obtaining workers' compensation coverage through a private insurer does relieve the employer of certain reporting requirement – namely, employers are not responsible for delays in reporting an injury to the insurance company or bad faith claims.

## Self-Insurance

Self insurance is the third option employers in Colorado can use to cover their employees, meaning they essentially act as their own insurance company with the approval of the Colorado Department of Labor and Employment. This agency may require a surety bond in the event the company defaults and is unable to pay its workers' comp claims.

Only larger companies with at least 300 full-time employees can choose to insure themselves. Two or more employers in the same industry can create their own self-insurance "pool" but they must still have at least 300 employees. When applying to the state for permission, they will need to submit a written proposal outlining the plan's administration, claims adjusting, membership, re-insurance, capitalization and risk-management of the pool.

Once a company gains approval to cover their own employees, they will have to file an accounting of assets, liabilities, business transactions and money reserves to the state insurance commissioner by March 30th of every year.

And while the executive director of the Labor agency can grant approval for self-insurance, he can take it away as well. This can happen for the following reasons:

- Insolvency
- Failure to provide an annual report
- Failure to comply with rules and conditions set forth by the state

If an employer loses the authorization to carry their own self-insurance policy, they will need to obtain a workers' compensation insurance policy through one the two options mentioned above.

Understanding how your employer provides workers' compensation coverage can be a valuable tool in ensuring you are properly compensated for any unforeseen on-the-job injuries.

In the final chapter of Part II of Babcock Law's Colorado Workers' Compensation Guide, learn about **'bad faith' lawsuits** , or the legal process attorneys use if an insurance company intentionally delays and misleads an injured worker or claimant.

## Colorado Workers' Compensation Insurers and Bad Faith Lawsuits – Your Rights

### Insurers have duty to act in good faith or face the possibility of further legal challenges

Any insurance company, including a workers' comp insurer in Colorado, is required to act in good faith. Meaning, they are obligated to investigate your claim and pay you benefits entitled to you under the law if your claim is legitimate.

An insurance company – whether they're an auto, home, life or workers' comp insurer – is said to be acting in “bad faith” if they ignore, mislead or make decisions contrary to what their investigation reveals. There are various reasons why you would have grounds to pursue a bad faith lawsuit in Colorado.

Before getting into what those grounds are, we want to clearly state that you cannot pursue a bad faith lawsuit just because an insurance company makes a decision you do not agree with. If they followed all the proper procedures and carefully examined your claim but legitimately denied it, you cannot file a bad faith insurance suit against them.

### What's the difference between a workers' compensation case and a bad faith lawsuit?

Workers' compensation claims and lawsuits only allow you to obtain benefits outlined earlier in this section or detailed in the Colorado workers' compensation statutes. You cannot seek any additional economic or non-economic damages through a standard workers' compensation claim except what's clearly stated in statute.

Take the following scenario for example:

While throwing luggage in and out of cars, a cab driver hurts his back and requires medical attention. His company's occupational accident insurance company (another form of workers' compensation coverage in Colorado) tells him that he's not entitled to full workers' compensation benefits when the law states that he is. In fact, the insurance company had a workers' compensation policy in place the whole time but was refusing to pay full benefits to the cabbie.

As a result of this misleading on the part of the insurance company, the cabbie had to initially absorb all of the costs associated with his injury. He had to sell valuable possessions and borrow money just to stay afloat...and also deal with extreme levels of stress and mental anguish.

This kind of situation would qualify for a bad faith suit – a workers' compensation insurer misleading an injured worker into thinking their injuries are not covered without investigating their claims.

## What are some other scenarios where a Colorado bad faith suit is called for?

Misleading an injured worker isn't the only instance where an insurance company can be sued for bad faith conduct. Other situations that justify a bad faith lawsuit include:

- A Colorado workers' compensation insurer makes a decision contrary to what their investigation(s) reveals
- Failing to timely investigate a workers' compensation claim
- Contradicting established claim practices
- Hiding or manipulating evidence that supports an injured workers' claim or request for benefits
- Dictating what medical care will be provided to an injured workers' treating medical providers
- Cutting off benefits in violation of Colorado workers' compensation law
- Intentionally delaying the payment of benefits the insurer knows are due

## Who would argue my case in a Colorado bad faith insurance lawsuit?

If you're working with a Colorado workers' compensation attorney to obtain your needed benefits and you'll discover the insurer is acting in bad faith, another licensed attorney from either within or outside of the workers' comp attorney's firm will have to come in and co-counsel the bad faith case.

Rules in Colorado governing how attorneys are supposed conduct themselves professionally, known as the Rules of Professional Conduct, clearly state that an attorney cannot advocate on someone's behalf if they're a "necessary witness" in a case.

Chances are your Colorado workers' compensation attorney will serve as your primary witness in a bad faith lawsuit. They will have the necessary experience and knowledge to clearly explain why they believe the insurance company acted in bad faith. Under professional conduct rules, he or she cannot fully represent you in both cases and argue on your behalf.

Even if you don't have the first problem in obtaining your workers' compensation benefits in Colorado, you go on thinking that your employer and their Colorado workers' compensation insurer would act with honesty and integrity.

Sometimes, that just isn't the case as workers' compensation insurers can sometimes mislead claimants and abrogate their lawful requirements. Bad faith lawsuits give you a way to hold them responsible for their nefarious action and compensate you for both economic and non-economic damages stemming from your situation.

This concludes part II of Babcock Law's Colorado Workers' Compensation Guide. Refer to Part I for specific processes relating to reporting an injury, obtaining benefits, hiring an attorney and how you can help them effectively represent you.

And if you've got any further questions or would like to schedule a free case evaluation, **contact Denver workers' compensation attorneys** at the Babcock Law Firm today.

## Premier Denver Workers' Compensation Attorneys at the Babcock Law Firm

Attorneys R. Mack Babcock, David Vogel and their support staff bring high quality legal representation to injured workers



Fully representing injured workers in Colorado to help them obtain their rightful workers' compensation benefits is our solemn obligation at the Babcock Law Firm. Colorado workers' compensation attorneys at the firm work tirelessly to ensure injured workers obtain the benefits they need to treat their workplace injuries and compensate them for any lost wages.

Take a moment and see the experiences and qualifications each member of the Babcock Law family brings to injured workers trying to do this.

And if you've been injured on-the-job or through someone else's negligence, **contact Denver workers' compensation attorneys** at the Babcock Law Firm today for a free consultation.

**R. Mack Babcock** – Founder of the Babcock Law Firm who has a diverse legal background coupled with a strong dedication to obtaining justice for his clients.

**David Vogel** – Colorado workers' compensation and personal injury attorney helping injured workers obtain their needed benefits.

**Jan Addams** - Practice Manager of the Babcock Law Firm. Jan expertly handles all aspects of running our organization and helps ensure your case moves along smoothly.

**The Babcock Law Firm**  
600 17th Street  
Suite 2800 South  
Denver, Colorado, 80202  
United States  
(303) 683-5033