

LEGALLY SPEAKING

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Injured on the Job - The Basics

Your Rights and Protections

You are working hard, doing your job and the next thing you know, you've gotten hurt. While you are out of immediate danger, you need additional medical treatment. What should you do next?

Work-related injuries are often a source of great anxiety to those who suffer them. This is true not only due to the injury itself, but also due to the pressure of having to look to your employer to deal with that injury and your recovery. What is important for workers to know is that injuries sustained while on the job carry with them different rights and responsibilities than injuries which are sustained while outside of work. For instance, unlike other situations where an injury happens due to the "negligence" of another (such as in an auto accident or a slip and fall at the supermarket), injuries sustained in the workplace do not require an employee to prove wrongful action on the part of the employer.

You may ask "what protections does the Workers Compensation law provide for employees?" New Jersey requires employers to purchase insurance for its employees. This insurance entitles employees who suffer work related injuries to three types of benefits: medical treatment benefits, temporary compensation, and permanent disability.

Permanent disability benefits are a monetary award for your permanent disability or, in other

Medical treatment must first be "authorized", by your employer or their insurance carrier. In most cases where the happening of an injury is not in dispute, your employer is required to provide to you all required medical treatment necessary to aid in your recovery. This medical treatment is paid for by the employer, most often through its insurance company.

Normally, medical treatment, once authorized, will continue until you have reached your "maximum medical improvement" which is when the treating doctor determines that you have healed as much as you are going to heal. At that time the employer has the right to refuse to provide additional medical treatment. You should know that if you disagree with this decision, you may challenge it in court and seek to have the medical treatment benefits reinstated.

Temporary compensation is, in essence, salary/wage replacement while you are recuperating from your injury. Temporary compensation is ordinarily payable after a one week waiting period. You should be paid 70% of your wages up to a maximum set by law. This maximum changes each year. You are entitled to temporary compensation while you are receiving authorized medical treatment. The treating doctor must certify that you cannot perform any work. Temporary benefits will usually stop when you are no longer under active authorized treatment or when your treating doctor says you can return to work.

words, for the reduction of your ability to work as a fully functional person due to permanent symptoms or limitations from the workplace

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injury. It does not require a complete inability to work, but rather, it measures the effective percentage reduction of the effected body part, such as a hand or a leg.

The measure of a permanent disability award is based upon a statutorily created scheme which sets dollar values based upon both the part of the body injured and the percentage of permanent injury to that body part. This is measured once you have reached maximum medical improvement and is determined by a workers' compensation judge. Expert physicians for you and your employer will assist the court and give professional medical opinions of your injuries and a measure of your permanent disability.

Finally, if within two years after you receive an award from a court and your condition gets measurably worse, you may request the court to "re-open" the case to pursue a recovery for the additional degree of disability which manifested itself.

In conclusion, it should be remembered that the foregoing is merely a thumbnail sketch of the general rights and responsibilities which are established under Workers Compensation law in New Jersey. Every case has its own distinguishable facts which weigh upon the rights and responsibilities of the parties. Kindly consult a qualified professional to get advice on your own particular case.

-Darren J. Leotti, Esq.

Mr. Leotti concentrates his practice in the field of workers compensation.

Long-Term Disability and Social Security Disability - Claims Worth Fighting For

You worked for your employer for years and you suddenly have a serious illness or medical condition that requires that you go out on long-term disability. You then file for long-term disability, collect for a while, and then the

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disability carrier terminates your benefits - leaving you and your family in a precarious situation. What do you do?

Or worse, you suffer a disability that prevents you from working anywhere. You file for Social Security disability and are denied by Social Security - leaving both you and your physicians bewildered. Do you give up?

Both long-term disability and Social Security disability benefits are significant sources of compensation for people who need them most - those who cannot work due to a debilitating medical condition. In the case of long-term disability, these are valuable benefits that you have earned and sometimes paid a premium for your employer. In the case of Social Security disability, these are all-important benefits that you have earned as a taxpaying citizen of the United States.

The road to collection and retention of these benefits can be frustrating and difficult. Due to the great value of and great need for these benefits, they are claims worth fighting for. Due to the complexities of the law and nuances of the system, legal assistance can be invaluable, especially when you are tending to your own medical condition.

Congress enacted the Employee Retirement Income Security Act of 1974 ("ERISA") to ensure that employees receive promised benefits including disability benefits. Beneficiaries must exhaust the plan's administrative remedies before they bring a suit to recover benefits. Our firm represents employees in ERISA administrative and civil claims to recover their disability benefits.

Furthermore, you have the right to appeal the denial of Social Security benefits and have a judge hear your testimony, your medical evidence and your arguments of legal counsel, in order to obtain these benefits. These fights are often successful and well worth the effort given the correct circumstances.

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You have worked too hard as an employee and been too good a citizen to simply throw in the towel when these benefits are initially denied or terminated. Please give me a call today to discuss your rights and how I might help you collect and maintain these valuable sources of income.

-Charles Z. Schalk, Esq.

Mr. Schalk is a partner who represents individuals with long-term disability and Social Security disability claims

Marriage vs. Civil Union - NJ Supreme Court Rules on Same Sex Marriage

On October, 25, 2006 in an historic decision, the New Jersey Supreme Court of New Jersey, ruled in the case of Lewis v. Harris et al. (A-68-05), which was brought by seven same sex couples. The Supreme Court held that denying same-sex couples the financial and social benefits and privileges given to heterosexual married couples does not serve any legitimate governmental purpose. Thus, the Supreme Court held that under the equal protection guarantee of Article I, Paragraph 1, of the New Jersey Constitution, same sex couples in committed relationships must be afforded on equal terms the same rights and benefits afforded to opposite-sex couples under civil marriage statutes.

The plaintiffs had filed this case in the Superior Court seeking a declaration that the laws denying same-sex marriage violated the liberty and equal protection guaranteed under Article I, Paragraph 1, of the New Jersey Constitution. The plaintiffs were also seeking an injunction, compelling the state officials to grant marriage licenses to them.

The Supreme Court stopped short of holding that same-sex couples have a fundamental right to marriage in New Jersey. Rather, the Court deferred to the legislature to either amend the marriage statutes or to create a parallel statutory

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scheme which will provide to same-sex couples, on equal terms, the rights and benefits enjoyed and the burdens and obligations borne by heterosexual married couples. The legislature was given a mandate to enact such a law, whether it be a marriage statute or a civil union type statute, within 180 days of the Court's decision.

The Supreme Court discussed the Domestic Partnership Act and noted that it has failed to provide equality for same-sex couples. The Domestic Partnership Act which was enacted in 2003, provided a formalization of the relationship of same-sex couples without providing all of the benefits of marriage. Under the Act, same-sex Domestic Partners may claim joint tax status for state tax purposes and may claim mandatory insurance coverage and pension benefits if their partner is a state employee. Private employers are not required to pay for Domestic Partner's insurance coverage, but must offer the coverage to Domestic partners on the same terms as they do to spouses. A significant benefit is that a Domestic Partner is treated as a Class A Beneficiary, like a spouse, for New Jersey Inheritance Tax purposes, which avoids a 15% tax upon death. The Domestic Partnership Act also creates a legal status available to committed opposite-sex couples over the age of 62. On the other hand the Act does not give Domestic Partners the right of election against the other Partner's Will.

The significance of the Domestic Partnership Act cannot be ignored. The Legislature is not obligated to enact new legislation for six months. During this gap, same-sex and opposite-sex couples over the age of 62 must rely on the benefits of the Domestic Partnership Act. In order to take advantage of the Act, the couples must file an Affidavit of Domestic Partnership with the local registrar.

-Ellen M. Gillespie, Esq.

Ms. Gillespie is a partner who concentrates her practice in wills, trusts and estates.

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**In Memory of George Mauro
and Edward Hogan**

In the Summer of 2006, MSC&G mourned the loss of George “Chip” Mauro, Esq. and Edward M. Hogan, Esq. Both were prominent attorneys in the area for decades, and more importantly they were both great gentlemen and will be sorely missed.

Chip Mauro and Ed Hogan were wonderfully positive individuals, eager to bring wisdom and wit to any situation, and known for their generous support of the community. Please join us in our memory of these great men and our friends.

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