

OTHER WORKERS' COMPENSATION FREQUENTLY ASKED QUESTIONS

1. My claim has been controverted by Workers' Compensation.

The State Insurance Fund (SIF) may controvert a claim when information is missing or when there is something unusual. For example, they receive a claim from a person and there is no report from their employer or their physician that an injury occurred.

- File a grievance within twenty days of receiving any notification that your claim is controverted. This includes verbal notification from your facility or formal notice from SIF.
- Obtain an attorney and have him/her request a hearing with the WCB.
- Make sure your physician has submitted all medical documentation to both the State Insurance Fund and the Workers Compensation Board.
- Continue appropriate medical treatment. Your physician will then submit progress reports to the State Insurance Fund.
- Continue to provide documentation for Workers' Compensation leave if you are out of work.

2. The WC decision was not in my favor.

- Both sides in a WC hearing have 30 days to appeal a WC decision.
- Talk with your attorney about appealing the decision.

3. What happens when my grievance goes to arbitration?

- When a grievance goes to arbitration, more information may be needed.
- The request for additional information will be sent to you from the NYSCOPBA attorney handling the grievance.
- Provide the requested information within the time specified.

4. Independent Medical Examinations (IME) scheduled by the State Insurance Fund (SIF)

- As a condition of receiving WC Contract benefits, you can be required to attend an IME.* If you miss the IME or reschedule it your benefits under the Medical evaluation program may be stopped and you will come off the 14.9 contract benefit.
- You may bring someone into the exam room with you. You may also audio or videotape the exam. Make sure to read the instructions on your appointment notice for details regarding this action. A recent Workers' Compensation Board decision clarifies this as follows: "An IME examiner may not refuse to conduct an IME when a claimant appears at the IME prepared to record or videotape an IME."
- Copies of your IME will be sent to you, your attorney (if you have one) and your physician within 10 business days.
- **Once received, you should make an appointment to discuss the results with your physician to determine whether he is in agreement with the information.**

5. I was ordered back to work after an Independent Medical Examination (IME) scheduled by the State Insurance Fund and my Doctor says I should not return to work.

- In the report, the physician may state you can work either light duty or full duty. The IME physician completes an Estimated Physical Capabilities Form and your facility may then order you to return to work depending on the IME report. You should make an appointment to SEE YOUR TREATING PHYSICIAN once you have received IME results to discuss whether he agrees with the return to work information stated in the IME. If he does not agree you can begin the Dispute Resolution Process (DRP) through National Medical Review (NMR) and provide an explanation letter to your physician.
If NMR agrees with your physician, you may remain out of work.
If NMR agrees with the IME physician, you must return to work or you will be placed on LWOP.
- Information regarding the DRP is included in this packet.

6. What is the statutory benefit?

- The statutory benefit is the amount of money (wages) you can receive directly from SIF based on WC law. The maximum amount you can receive is established at the date of your injury, based on the rate at that time. The exact amount you receive depends on the level of your disability, as determined by your physician or the IME physician.

- 7. Is the statutory benefit taxed?**
 - The statutory benefit is non-taxable.
 - While you are in pay status through the contract benefit, taxes are withheld.
 - You are entitled to a refund for your taxes.
 - Information regarding taxes is included in this packet.
- 8. I am back at work. Do I have to charge WCL or my accruals to attend the IME exam?**
 - There should be no charge to WCL or accruals to attend this exam.
- 9. I am back to work and the IME is scheduled on my day off. What should I do?**
 - Attend the exam. You are entitled to be paid overtime (if eligible) for the time spent attending the exam, as well as for time spent commuting to and from the exam.
 - If you are denied such payment, contact your Regional VP, Business Agent or the grievance department.
- 10. My doctor has released me to return to work light duty. What do I do?**
 - Your provider can request light duty for up to 60 days. The note must state the date you can return to full duty. The return to work full duty date should be no more than 60 days from the date of the beginning of light duty. If your doctor is reluctant to provide a clear full duty date, advise him/her that you will not be allowed to return to work without a date.
 - This date is an estimate. You can always be re-evaluated by your physician while working light duty.
 - Bring the note requesting light duty to your facility. Your physician should use the ERS 101, Estimated Physical Capabilities Form, so that your abilities and limitations are clearly stated. It is not necessary to send the physician's complete narrative report.
 - If you are not allowed to return to work light duty, call NYSCOPBA's main office to speak to Dana Betts, Ext. 247.
- 11. My doctor has released me to return to work full duty.**
 - Bring the note releasing you to return to work to your facility. The Information must specify that you can return to full duty without any restrictions. The facility does have the right to have you examined by an Employees Health Services (EHS) physician prior to approving a return to work full duty.
- 12. My doctor says I might not be able to return to work.**
 - Call William Naylor at NYSCOPBA Ext. 257, to obtain information about Disability Retirement call Sharon Smith at Ext. 236, regarding any questions you have about Health Insurance.
 - Talk with your workers' compensation attorney about the long term benefits for which you may be eligible.

13. **Do I earn accruals while I am out on WCL?**
- You earn accruals anytime you are in pay status.
 - You do not earn accruals while out on 1/2 pay.
14. **Do I receive holiday compensation pay or compensatory time off while I am disabled due to a work-related injury?**
- During the first 6 months while you are on full pay you **will not** earn holiday pay or compensatory time off.
 - Once you start using your accruals after 6 months, you **will** earn holiday pay and compensatory time off.
 - You are entitled to receive personal leave time once you return to work.
15. **Can I get my accruals back?**
- Once you are back to work full duty, your facility will report the amount of time off used for your Workers' Compensation Injury to the WCB and SIF.
 - SIF will then complete a FROI form reporting the time off for your Workers' Compensation injury. This form is sent to the WCB, you, your attorney, your facility and the Comptroller's Office.
 - **It is very important to keep this form.**
 - Restoration of accruals is based upon the FROI form.
 - Restored accruals cannot be used again for the same injury.
16. **Do I have to wait until a Workers' Compensation hearing to be reimbursed for out of pocket expenses and mileage?**
- If your claim is established and accepted by the State Insurance Fund you can submit your expenses for reimbursement at any time.

17. I have been out of work for almost a year. Will I be terminated?

- If the disability was NOT due to an assault sustained in the course of employment, you are entitled to one full year of **cumulative** absence for a work-related injury. If you are able to return to duty before the year is up, you cannot be terminated.
- If the disability is the result of an assault sustained in the course of employment, you are entitled to two years of **cumulative** absence for a work related injury. If you are able to return to duty before the time expires, you cannot be separated from service.
- If you or your doctor believes that you will be unable to return to duty within the one year time frame, you should contact your regional NYSCOPBA Vice President or Business Agent and request to be referred to a NYSCOPBA attorney.
- If you are permanently disabled from the duties of your position, you may be eligible for a disability retirement. The disability retirement application process can take some time, so application should be made as early as possible.
- If you are released to return to work, you may be scheduled for an Employee Health Services examination with a state physician.
- If this occurs, you should bring with you:
 - a medical release from your physician
 - medical reports from your physician clearly stating your injury, that you are recovered and are capable of performing all your job requirements.

18. I am on LWOP or I have been terminated from service due to extended absence. Can I get any money?

- You may be eligible for the statutory benefit paid to you by the State Insurance Fund if your claim was accepted by the WCB and you remain disabled. Your facility should notify SIF about your pay status. Contact SIF claim handler or your attorney should you have one. A hearing may need to be scheduled with the WCB to address this issue.

19. I received a bill for my health insurance. What should I do?

- Contact Civil Service Health Benefits at 1-800-833-4344 from 9AM to 3PM, Monday through Friday or NYSCPBA's Health Benefits Specialist Sharon Smith at ext. 236

20. My facility is also charging my Workers' Compensation Leave time to the FMLA? Can they do that?

- FMLA regulations allow employers to charge WCL concurrently with Family Medical Leave.

Additional information can be found below:

- NYSCOPBA: www.NYSCOPBA.org (links to SIF, WC, and MANY other resources)
- Workers' Compensation Board: www.wcb.ny.gov
- State Insurance Fund: www.nysif.com.
- Retiree Information for restoration of accruals

This information is not legal advice. Contact your Workers' Compensation attorney for specific legal information regarding your legal rights in a workers' compensation or disability matter.

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