

WHAT TO DO AFTER AN ACCIDENT

This booklet describes what employer, worker and supervisor should do after an accident on the job.

Emergency medical care is the first concern after an accident and should always be provided first. After emergency medical needs have been taken care of, the worker and employer should follow workers' compensation procedures described here.

ACCIDENT REPORTING AND FOLLOW-UP: NOTICE OF ACCIDENT FORM

The worker who has had an accident should fill out a Notice of Accident form.

The Notice of Accident is a report by the worker notifying the employer that an accident has taken place at work, the date and a general description of the accident.

In case of a dispute, the Notice of Accident provides evidence that the worker reported an accident. The notice is not legal proof that the accident occurred.

The notice also may notify the employer of a safety hazard that should be fixed.

The Notice of Accident form is a two-part carbonless form. A reduced size copy of the form is shown on this page. This copy is not exactly like the actual Notice form and not suitable for reproduction or use.

The forms are printed by the WCA. They should be provided to employers by the insurance company, or can be obtained free of charge from the WCA.

Employer:

You are responsible for providing a supply of Notice of Accident forms in an accessible location, such as an employee bulletin board, near your Workers' Compensation Act poster. They may be hung directly over the center space on the poster.

NOTICE OF ACCIDENT / NOTIFICACION DE ACCIDENTE	
In accordance with New Mexico law, Section 52-1-29, NMSA 1978	
<i>Conforme a la Ley de la Compensación de los Trabajadores, Sección 52-1-29, NMSA 1978</i>	
I, _____, was involved in an on-the-job accident	
Yo, _____ (name of employee/nombre del empleado) me lastimé en un accidente en el trabajo	
at approximately _____, on _____, 19____.	
aproximadamente (time/a la(s) hora(s)) el (date/fecha) del 19_____.	
What happened and where: _____	
¿Qué ocurrió y dónde ocurrió? _____	

Signed: _____	Signed: _____
Firma: _____ (employee/ empleado)	Firma: _____ (employer or agent/ empleador o agente)
Employee's social security number: _____	Date: _____
Número de seguro social del empleado: _____	Fecha: _____
Employer/employee: Each keep one copy. For more information, call the Workers' Compensation Administration. Ask for an ombudsman.	
Empleador/empleado: Retener una copia. Para más información, póngase en contacto con el Programa de Asesores (Ombudsman Program) en la Administración de la Compensación de los Trabajadores	
Form NOA-1 (5/97)	

This booklet describes the Workers' Compensation Laws of New Mexico, Chapter 52 of the New Mexico Statutes, effective Jan. 1, 1991, as amended through the date of this printing. This law applies to cases that occurred on or after the effective date.

Booklet #B1, reprinted with revisions in 1999.

Supervisors should be instructed that when a worker presents a Notice of Accident form, the supervisor should sign the form, take one copy and give one copy back to the worker.

The company should plan a procedure for filing Notice of Accident forms. Management or the company safety committee should follow up on every report of accident to determine if there is a safety hazard that could be fixed.

Worker:

Use the Notice of Accident form to report **any accident on the job, even if there is no injury.**

Fill out the form as soon as you can -- no later than 15 days after the accident. Make a note of anyone who witnessed your accident. The Notice of Accident form should be signed by you and a supervisor. Take one copy and keep it in a safe place.

If you were injured, you are also responsible for making sure your employer knows about your injury.

If you know your employer's procedures, follow them. If you don't know, find out by contacting someone in authority.

SELECTING A DOCTOR FOR TREATING A WORK-RELATED INJURY

Which doctor should the injured worker see for medical treatment under a workers' compensation claim?

Under New Mexico law, the employer has the right to select the doctor (or other health care provider) who will provide medical treatment to the injured worker at the beginning of the treatment period. Alternatively, the employer has the right to allow the injured worker to choose the doctor at the beginning. This right of selection applies *after* any emergency treatment.

The employer has a duty to notify the worker of which procedure to follow. Either the worker must be told to see a particular doctor, or the worker must be told to select his own doctor. This instruction should be given in writing.

The health care provider selection process is explained in detail in Booklet B4, "Health Care Issues in Workers' Compensation."

Employer:

You should have a plan for health care provider selection in advance, so that if an injury occurs you know what to tell your employee. Check with your claims representative now and find out.

CLAIMS REPRESENTATIVE

When a work-related injury occurs and medical care is required, someone who represents the insurance company or other payer is in contact with the worker. Often one person is involved throughout the entire course of medical treatment. In this *Handbook*, that person is called a **claims representative**.

When an employer is insured through an insurance company, the claims representative is usually an insurance adjuster who works for the insurance company.

When an employer is self-insured, the claims representative may be a professional staff member within the organization, in the risk management department or a similar department.

Some self-insured employers contract for workers' compensation services with outside agencies known as third-party administrators. For such an employer, the claims representative works for the third-party administrator.

Worker:

In an emergency, go and get the medical care you need wherever it is available. At any other time, before you receive medical care, you should find out the proper procedure.

If your employer has provided written instructions, follow the instructions. If your employer or claims representative tells you which doctor to see, follow the instructions. If an emergency room doctor advised you to go to another doctor for follow-up care, you should check with your employer or claims representative before going to that doctor.

If the employer gives you no instructions, you can go to a doctor that you choose.

If you have been instructed by your employer to go to one doctor and you go to a different doctor, you could be responsible for paying for your own medical care.

IF THE INJURY IS NOT APPARENT AT THE TIME OF THE ACCIDENT

Sometimes an accident happens and it doesn't seem that there was any injury. Then the worker starts feeling pain later.

The Notice of Accident is the worker's statement that the accident occurred, even if there did not seem to be an injury at the time.

Worker:

If you discover you were injured some time after an accident, you are responsible for telling your employer. Otherwise the employer might not know that there is a claim to pay.

QUESTION:

Q: I hurt my back at work. I filled out the Notice of Accident form and stated that I had fallen down, but I did not know I was hurt so I did not report the injury. My employer told me I cannot make any workers' compensation claim now. Is that true?

A: Your employer is probably not correct. But the timing is very important. As long as you completed a Notice of Accident form within 15 days of the accident, you usually can make a claim up to one year after the date you learned you were injured. You do not receive payment to cover any medical expenses before you reported the injury (except emergency expenses).

Insist that your employer complete the proper forms and report the injury to the claims representative.

This question shows how important it is to fill out the Notice of Accident form. The claims representative has the right to look into your claim that the injury was work-related. If you had not filled out the Notice of Accident, then you would not have evidence that you had an accident at work that could have caused your back pain.

Once you report the injury, you should ask for instructions on future medical care for your injury, to make sure that your future care will be covered.

WHEN IS AN INJURY COVERED BY WORKERS' COMPENSATION?

New Mexico law says that any injury "by accident arising out of and in the course of ... employment" is covered by workers' compensation.

In a simple case, where a worker is injured while working on company property during normal working hours, it is clear that the injury is covered. But many cases are more complicated.

If the injury occurred at the workplace, it is usually covered.

Health conditions that build up over a period of time, such as carpal tunnel syndrome of the wrists, or as a result of continued exposure to environmental conditions, such as hearing impairment, may be classified as occupational injuries or occupational diseases and may be covered if the condition was caused by work.

Injuries that occur while going to or coming from work are usually not covered. Injuries that occur while traveling for work purposes usually are covered.

A connection between the work and the injury must be established by a doctor.

Worker:

In many circumstances it is not clear whether an accident was work-related or not. If you think your accident was related to work, make a claim.

If your employer or supervisor says you are not covered, you do not have to accept that as the final authority. You can call an ombudsman at the Workers' Compensation Administration for information and assistance.

Do not let the injury go until you have an old, complicated or serious problem before you find out whether this injury is covered.

WHAT DOES IT MEAN TO "FILE A CLAIM?"

The word "claim" and the phrase "file a claim" are used often about workers' compensation and other insurance. These terms may be used in several different ways, which can be confusing.

Claim filed with employer

"Filing a claim" for workers' compensation benefits is a matter for the worker and the employer. When a worker files a claim with the employer, the employer then contacts the claims representative. This is the beginning of the procedure that normally results in payment of the claim by the insurance company.

Every time the worker fills out an insurance form requesting payment for medical services, this might also be called "filing a claim." (For work-related injuries, workers should file insurance claims under the company's workers' compensation insurance and *not* under the general group health plan.)

Claim or complaint filed with WCA

The word "claim" is often used for the legal action that may be filed with the Workers' Compensation Administration if the worker believes the employer/insurer has failed to make required payments.

This may also be called a "complaint," since it is a legal document like a complaint in any other court. **This Handbook uses the word "complaint" for this action.**

Filing a workers' compensation complaint is similar to filing a lawsuit. Workers should file a complaint only if there is a dispute that cannot be resolved through informal discussions or through the help of an ombudsman.

When a complaint is filed, **it does not mean that the worker will begin receiving indemnity pay.** It means that a process of dispute resolution will begin. The dispute will be referred to the Workers' Compensation Administration mediation program. If mediation does not resolve the dispute, it will be transferred to the court of the Workers' Compensation Administration.

Complaint forms are available from the Workers' Compensation Administration. A list of offices and telephone numbers is in the inside back cover of this booklet.

Insurance Claims

The word "claim" may be used for any of the forms used to document medical treatment for payment. These forms often go directly from the office of the doctor (or other health care provider) to the insurance company office.

EMPLOYER'S FIRST REPORT OF INJURY OR ILLNESS -- FORM E1.2

The employer is required to file a report with the WCA for every work-related injury that causes the worker to be unable to go to work for more than 7 days. This report is called the Employer's First Report of Injury or Illness. The current form is numbered E1.2.

The days may be counted as one consecutive week of lost time, or more than 7 non-consecutive days.

Many insurance carriers require their insureds to file the Employer's First Report with them even for injuries resulting in fewer than 7 days of lost time. Many carriers routinely file the First Report with the WCA for all reported accidents, even though some of the accidents reported will not result in indemnity claims. No harm is done by filing First Reports that are not required.

The employer is required by law to file the Employer's First Report within 10 days of the date that the employer knows or reasonably should know that an accident resulting in more than 7 days of lost time has occurred. This is sometimes -- but not always -- the same day as the accident.

Many insurance carriers file these reports on behalf of their insureds. The employer should find out from the claims representative which procedure to follow. In some cases, the carrier will ask the employer to fill out the form on paper and mail or fax it to the claims representative, who will then file it with the WCA on paper or through electronic data transfer.

The employer should contact the claims representative and find out the carrier's preferred procedure. The claims representative may also be able to notify the employer of any change in the notification or filing requirements. The employer should make sure that a copy of the report is furnished to the worker.

Employer:

The law makes you responsible for timely filing of the Employer's First Report of Injury or Illness. The law is not specific as to how you are supposed to be notified that a worker has been injured. If you know about the injury from any source, or if you reasonably should have known, you are responsible. Even if you aren't sure whether the injury was work-related, if you have information from any source that it might be work-related, you are responsible. Filing the form is not an admission of liability.

Make sure you receive clear instructions from your carrier and follow those instructions.

The Workers' Compensation Administration provides a separate booklet containing detailed instructions for filling out the First Report. That booklet contains an original blank form, which you may copy and use for your reports. See the inside front cover of this booklet for a list of the current booklet titles.

SUMMARY OF RESPONSIBILITIES AND TIME LINES WITHIN FIRST DAYS FOLLOWING AN ACCIDENT

1. The worker has 15 days from the date of accident to file the Notice of Accident and have it signed by a supervisor. The worker keeps one copy and the employer keeps one copy. Do not send this notice to the state.
2. The employer is responsible for instructing the worker on selection of health care provider. If this has not been done by advance notification, the employer should provide instructions in writing as quickly as possible, or immediately after any emergency medical care.
3. The employer is notified that an accident with lost-time injury has occurred. From the time the employer knows, or should have known, that a lost-time injury has occurred, the employer has 10 days to file an Employer's First Report of Injury or Illness with the WCA -- *only if* the injury results in more than 7 days of lost time.
3. From the time the Employer's First Report is filed, the employer has 14 days to pay the first indemnity pay check to the worker. The employer should notify the claims representative as early as possible to meet this deadline.
4. Whether or not the employer intends to deny coverage, the employer must provide the worker with the identity of the insurance carrier and the source of coverage -- enough information so that the worker can contact the insurer. The employer should also give the reason for denial of coverage.

STAYING IN TOUCH WITH THE CLAIM AND THE WORKER

Employer:

After an injury has happened and you have notified the insurance company, the insurance company takes over the management of the worker's claim. Your legal standing in the processing of the claim is limited (except for self-insured employers).

You might find it beneficial to take a greater interest than the law or your insurance company requires of you, both as an employer and as a purchaser of insurance services. If you want information on claims processing, you may have to ask for it.

The relationship that you develop with the injured worker during the period of injury may have a great effect on the worker's motivation to return to work. An injured worker who is forgotten by his employer may come to feel alone, confused and resentful. An injured worker treated with personal concern is more likely to be eager to return to work with improved morale and company loyalty.

You may also benefit from finding opportunities to bring injured employees back to work as soon as the doctor allows them to return. This could involve assigning the injured worker to lighter work on a temporary basis during recovery.

By helping injured employees return to work quickly, you may enjoy long-term insurance savings as well as the value of your productive workers.

Steps the employer can take:

Telephone the worker or his family. Send a get-well card.

Send a member of management to visit the worker and explain the workers' compensation system. Learn from the worker how the insurance company is handling the claim.

Provide the worker with copies of this booklet and others in the series.

Find low-cost ways to show your concern and encourage fellow employees to show theirs.

Find opportunities to get the worker back to work at reduced or modified duty at the proper time.

Caution: Do not discourage the worker (or appear to discourage the worker) from filing a workers' compensation claim. If the worker is represented by a lawyer, you probably should not discuss the case with the worker, but you are not barred from discussing other matters, unless your lawyer tells you so.

As the purchaser of insurance, you have an interest in finding out how your insurance carrier is managing the claims of your employees. The insurance adjuster is acting on behalf of your company. As such, the adjuster's actions reflect on you. Make sure your insurance company knows that you care what happens. The insurance company is required to provide information to you, if you request it.

CHANGES IN THE LAW AND PROCEDURES

Worker:

For accurate information, do not rely on a friend who had a workers' compensation case in the past. Even though they may sincerely want to help, they may not know about changes in the law or new procedures or requirements.

The Workers' Compensation Administration did not exist until 1986. The ombudsman program was started in 1991.

The State Legislature has revised specific portions of the law several times in recent years. Your case is governed by the law that was in effect at the time of your accident or disability. If the law is changed while you are still recovering from your injury or receiving benefits, your case is still administered according to the law that was in effect when it started.

The booklets in *The Workers' Compensation Handbook for New Mexico* are revised from time to time to keep up with changes in the law. All the booklets are dated so that you can tell the printing date of the booklet you are reading.

If you are in doubt whether the booklet you have is current, you can call the Workers' Compensation Administration ombudsman program or your nearest regional office and ask. The offices are listed on the inside back cover of this booklet.

WORKERS' COMPENSATION BENEFITS

A worker who is injured on the job is entitled to have medical expenses paid in full, and to indemnity pay. The benefits are paid by the employer's insurance company. The rules for payment of these benefits are set by the workers' compensation law and the regulations of the WCA.

This section describes the benefit rules for most injuries. For injuries that are serious or long-term or have unusual complications, refer to Booklet B2, "Benefits for Serious or Long-term Injuries."

MEDICAL BENEFITS

The employer must pay for all necessary and reasonable medical costs related to the injury, including doctor bills, medication, ambulance, hospital expenses, physical therapy and so on.

Worker:

Make sure your employer or claims representative is notified that you have been injured and that you need medical treatment -- or your medical expenses may not be covered.

Tell all doctors and other medical personnel that you have a work-related injury. In an emergency, if you are not sure whether the injury is work-related, you should use your own best judgement.

If an authorized doctor refers you to another doctor for treatment, medical bills from the second doctor are covered.

The employer is not responsible for medical costs until the worker has notified the employer of the injury, except:

- in emergencies;
- when the employer knows about the injury anyway;
- when the worker does not know when he goes to the doctor that the injury was caused by an accident at work;
- when for other good reason notice to the employer could not be given.

For information on medical care issues, see Booklet B4, "Health Care Issues in Workers' Compensation."

MILEAGE AND TRANSPORTATION BENEFITS

Medical benefits include payment of transportation costs, which may be the cost of public transportation or a reimbursement for driving a private automobile, based on the number of miles and a standard reimbursement rate.

The exact mileage benefits are set by the Rules of the Workers' Compensation Administration and may be adjusted from time to time.

Worker:

If you have to travel to receive your health care, whether by private automobile or by public transportation, you might wish to contact an Ombudsman for the current mileage rate and instructions on keeping travel records.

Find out what travel costs are covered before you travel.

TEMPORARY DISABILITY INDEMNITY PAY

Worker:

If you are unable to work and under a doctor's care for an on-the-job injury, this is called "temporary total disability." The indemnity pay for temporary total disability is two-thirds of your average weekly wage, up to a maximum amount allowed by law and based upon statistics provided by the New Mexico Department of Labor. The maximum amount was changed by law in 1999. For injuries that occur up to the end of 1999, the maximum is 85 percent of the state average weekly wage for all workers in New Mexico. For injuries occurring on or after Jan. 1, 2000, the maximum will be equal to the state average weekly wage.

For example, if your wage is \$300/week at the time of your injury, your temporary total indemnity pay would be two-thirds of \$300 or \$200/week. If your wage is \$900/week, two-thirds of that is \$600. Since \$600 is more than the maximum set by law (under both the old and new versions of the law), you would receive the maximum allowed.

The maximum indemnity pay is adjusted every year, for new claims only. You may wish to contact an Ombudsman to check on the current maximum.

You are not entitled to indemnity pay if you are off work 7 calendar days or less. If you are off work 28 calendar days, then you are entitled to pay for those first 7 days.

In most cases you should receive your first check for indemnity pay within 31 days of your first missed day of work. If you don't know when your check is due, or if you don't receive your check on time, contact your claims representative.

If you are able to go back to work at a different job, at a reduced wage or part-time, you may be able to receive some continued indemnity pay while you also receive wages for the work you are doing. See Booklet B3, "Going Back to Work."

Your employer may provide for extra pay to supplement workers' compensation indemnity pay, or may continue to pay other company benefits on your behalf. Talk to a union representative or the company personnel office. If you receive any pay above the amount set by the workers' compensation law, it is separate from workers' compensation.

Employer:

If you are paying both workers' compensation benefits and other payments, it is important to keep clear records that distinguish the workers' compensation benefits from other payments. Many employers who make supplemental payments even issue two separate checks.

The WCA recommends that you send the employee a notice explaining what the benefits are and where they come from. If you are voluntarily paying any other expenses, such as the worker's share of a group health plan, the WCA recommends that you provide a detailed accounting to the worker. It helps to keep the communication clear and precise if the worker knows the source of benefits. It may also have tax consequences for you and the worker.

INDEMNITY PAY IS TAX-FREE

Worker:

You do not have to pay income tax on your temporary total disability indemnity pay. Your indemnity paycheck is not like a regular paycheck from your employer. No tax deductions are taken out of the check you receive.

HELP FROM THE WORKERS' COMPENSATION ADMINISTRATION

Anyone who has any question about a workers' compensation claim can call the Ombudsman program of the WCA. The ombudsmen can provide information. In some cases, they can help to resolve disagreements, if the disagreement does not involve a legal issue. See Booklet C1, "The Ombudsman Program," for more information.

For additional booklets from *The Workers' Compensation Handbook*, call your nearest WCA office. The booklets can be mailed to you. The offices are listed on the inside back cover of this booklet.

The Workers' Compensation Administration regulates and oversees the workers' compensation system. It **does not** pay workers' compensation indemnity or medical benefits.

Department of Labor:

Workers' compensation is not the same as unemployment compensation. Unemployment compensation is administered by the New Mexico Department of Labor (DOL). For information about unemployment compensation, contact DOL. The main office is in Albuquerque (841-9300). Field service bureaus are located in Alamogordo, Artesia, Carlsbad, Clovis, Espanola, Farmington, Gallup, Grants, Hobbs, Las Cruces, Las Vegas, Raton, Roswell, Santa Fe, Silver City, Socorro, Taos and Tucumcari. See the State of New Mexico listings in your local telephone directory.