

## Tips for the Unwary Claimant

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1. Report all aspects of an injury even if no medical treatment is sought.
2. Get names of witnesses.
3. Make sure a supervisor is made aware of an injury, not just a co-worker.
4. Although you must go to occupational health or employer sponsored health program for your first medical treatment if required at your place of employment, your responsibility ends there. Quickly secure your own doctor and don't be shy about it.
5. If you are going to be out of work for over three months, you may still be able to protect your job if you keep your employer aware of your medical status and your doctor gives a reasonable time frame for your return.
6. However, don't go overboard with #5, i.e. rush yourself back to work because your employer can fire you if you return to work with no restrictions put into place by the physician (catch-22 admittedly as some employers won't let a claimant back without full clearance...)
7. Hire a lawyer early on in the process because they are free resources.
8. Make sure you are educated as to whether your doctor is claimant friendly or insurer backed.
9. Do not sign an open-ended medical release.
10. If a nurse case manager is assigned to you, be careful as they are insurance reps.



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## Workers' Compensation



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What You May Not Know Can Hurt You

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# Help Protect Your Rights by Learning the System

Did you know that Massachusetts employers and by extension the insurance industry covering workers' compensation claims have experienced a boon time while workers have suffered a rapid and steep decline in benefits? Prior to 1991, the Massachusetts economy was in the doldrums and industry was purportedly being driven out of the Commonwealth because of hefty premiums from workers' compensation claims.

No doubt, there was a need for overhaul. However, the direction that the workers' compensation act followed from 1991 forward has been straight down in protecting workers' rights. Not only have workers suffered, but the taxpayers have suffered as well. This is so because if fewer workers are being picked up by the insurance industry, then more are finding their way on public assistance. **THIS IS BAD POLICY!**

**Let's get to specifics.** Prior to 1991, workers were entitled to 3 years of total disability and 11.5 years of partial disability benefits. Let's say that a worker injured her back and was making \$1,000.00 per week. Doctors have put permanent restrictions on the worker and she has suffered wage impairment. If she were only able to make \$600.00 a week going

forward in a new industry, the old system would protect that wage loss for an extended period of time, up to 11.5 years.

Granted, this extended partial led to a subset of ill-intentioned workers to malingering until they forced settlement upon the insurer. But the concept was fair; it was the system's inability to monitor and uproot these bad cases that caused the problems.

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## Kinks in the System

Unfortunately, the legitimate claims have now been left to suffer. The partial disability benefits which were 11.5 years prior are now as little as 4 years in some cases, 5 years in others. This means that if you suffer significant wage impairment, you will lose the benefit of compensation protection after only a short period of time. The system, therefore, fails to help the honest most hard-pressed workers.

Further, the system put into place a concept called the "pay-without-prejudice" period. For six months, the insurer can pay on a claim voluntarily and then take a person off with really no reason or rationale. The claimant then must file a claim in court that could take several months. A benefit flows to the insurance company because many claimants choose to give up the fight and return to work prematurely.

If the insurer pays beyond this six-month period then it must bear the burden of going before a judge to discontinue the benefits. Sounds good. The insurers, however encourage claimants to sign extensions of this six-month period by

duping them into signing forms saying that "your benefits will continue if you sign this form for up to a year." This is deceitful practice and happens regularly but there is nothing that can be done about it because it is not technically incorrect. A claimant's benefit can be extended up to a year in the insurer's discretion, but it is almost never done. What happens in real practice is that the insurer shuts the person's benefits off when it is in the insurer's best interest, which is usually a month after the signing of the paper!

## A Climate Change

As former chairman of the *Massachusetts Bar Association Sub-Committee on Workers' Compensation*, I can tell you that a great deal of effort is being done to encourage the legislature to help workers. In the current political climate, change has been slow. I am confident that progress will be made to improve the lot of Massachusetts' workers without breaking the bank.