

# **The South Carolina Workers' Compensation System**

*A Free Guide For Injured Workers*

*Presented by*



## **Lee Injury Law**

HELPING REAL PEOPLE

*803-500-0000*

*Dear Reader,*

*Thank you for making the choice to get this special report.*

*Every year, thousands of people like you deal with work injuries. You might even be surprised how many of your neighbors and people in your region have gone through exactly what you are dealing with right now.*

*You should know that there is a path for you.*

*I also have a piece of good news for you... By getting this report, you've taken the first several steps you need to a successful outcome. You could have ignored this information and kept on sifting through all the random pieces of information available for you online. Instead, you now have a comprehensive resource about workers' compensation in South Carolina.*

*My job as a workers' compensation attorney is very rewarding. A few years ago, a lady came into my office for help. Her husband had died on the job, and workers' comp refused to pay – in fact, they denied that he was even an employee!*

*Another law firm (which did not handle many workers comp cases) had the case for two years, and then finally gave up and told this lady "sorry, there's nothing we can do."*

*I knew there had to be more to the story, so I took the case. After investigating the facts, I was able to prove that he was an employee, even though he was being paid under the table, and I was able to obtain a six-figure award for his wife and family.<sup>1</sup>*

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<sup>1</sup> We are proud of the results we have achieved for our clients; however, prior results should not and cannot be relied upon to create any expectation about what can be recovered for a client in any other case.

*That story is one of many that we have handled at Lee Injury Law.*

*Once you've looked through this report, you should feel free to call us to discuss your legal issue. My hope is that you will look to us for help when you need it. We are excited to serve you.*

*Sincerely,*

*Tyler Lee.*

*P.S. We are just a phone call away at 803-500-0000. Make sure you mention that you downloaded this report, and we'll answer whatever questions you may have!*

*About the author...*



Attorney Tyler Lee left one of the “big firms” after fourteen years of practicing law to open Lee Injury Law in 2019, so that he could focus on what he loves doing most – helping injured people win their legal cases and get their lives back on track. He has been recognized as an AV Preeminent© Lawyer by Martindale-Hubbell, has been named to the Best Lawyers directory, has a 10 out of 10 rating with AVVO.com, and was named to the Legal Elite of the Midlands for 2019 by *Columbia Business*

*Weekly*. He began his legal career as a runner in a personal injury law firm while in college, and worked for two years as a law clerk while in law school with another prestigious firm, where he first developed a passion for helping the injured. After a year as a judicial law clerk to the Honorable James E. Lockemy, who is now the Chief Judge of the South Carolina Court of Appeals, and another year as an Assistant Attorney General, prosecuting Internet Crimes Against Children, he began handling auto accident, personal injury, wrongful death, and workers' compensation cases on a full time basis. He has handled well over 1000 claims, from minor injuries to catastrophic brain and spinal injuries, and has significant courtroom training and experience.

Tyler lives in West Columbia, SC, with his wife, two beautiful children, and their three dogs. He is an licensed private pilot, and enjoys BBQ cooking, fishing, hiking, and enjoying the outdoors.

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# Navigating Workers Comp:

## A Guide for Injured Workers in South Carolina

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Lawyers who represent injured workers in South Carolina must have a comprehensive understanding of the law of workers' compensation, significant practical experience in trying cases and negotiating settlements, and a deep understanding of the medical issues involved in the treatment of work injuries. I have chosen to focus my practice on representing injured workers because I enjoy being able to help real people deal with what is often a frightening and confusing process, where one wrong move can have consequences that last a lifetime. It is a very difficult job, but is also very rewarding. My approach to handling these claims is to carefully consider every aspect of my clients' lives – financial, physical, and emotional – and create a strategy to achieve the best possible outcome.

I wrote this guide for my clients to learn more about the workers' compensation system, because I have found that the more my clients know about the system, the less stressful and unpredictable the process can feel. However, it is not intended to be relied upon as legal advice, as the law of workers' compensation is constantly changing, and is much more complicated than the simple version presented here.

### History

Many years ago, South Carolina had a mostly rural economy - most people were born, lived and worked on farms. However, with the invention of things like the cotton gin and the steam engine, there was less need for farm laborers. People began to move closer to the larger towns and cities, where they found work in the new textile mills and other factories.

Unfortunately, factories and plants were filled with machines and were a dangerous place to work, and many workers were injured or killed on the job. It soon became clear that the traditional legal system for compensating injured people was inadequate to address this new problem.

## The Tort System

The traditional legal system for compensating a person for an injury is called the tort system, also known as civil law. “Tort” is a word that comes from Latin, and means “twisted.” In tort or civil law cases, the injured person is allowed to present his or her claim in court, before a judge and jury, and must prove two things:

1. Liability: the injured person must show that the defendant, which could be another person or a company, was negligent, meaning that the defendant had a duty of care to the injured person, and failed to meet that duty. For example, drivers on the road have a duty to keep a safe distance from other cars. When they drive too close to another car, they fail to meet that duty – and if they cause a wreck, they are then liable for the damages to the injured party.
2. Damages: the injured person must prove his or her injuries to the jury by presenting evidence, in the form of things like medical records, bills, or even simply testifying to the jury under oath about things like pain and suffering, or emotional distress, which were caused by the injury. The jury must then consider the evidence and render a verdict in terms of money that the defendant must pay to the plaintiff. They can also render a verdict for the defendant, meaning that the plaintiff failed to prove his or her case and is not entitled to any compensation.

This system of civil or tort law serves several purposes. For one, it gives someone who has been injured by another a way to obtain justice through our system of government. Imagine a case where someone is negligent and drives a car into another person’s house. Without a legal remedy, how is that homeowner going to make the defendant pay for the damages? They might have to resort to threats of violence, or even acts of violence, to get the defendant to pay up. Imagine a society where everyone makes their own justice – people would be running around fighting all the time, and very little progress would be made!

Instead, we have a formal justice system which has standard rules which apply to everyone. Everyone in the United States has a right to a jury trial when they feel they have been wronged by another. A jury trial is not a guarantee of justice, because the people on the jury are ordinary human beings with the capacity for error – but it is as close as we can get.

### *The Need for a New System*

The problem with the tort system, in the case of injured workers, is that it can be slow and unpredictable. Cases can take a year or more to come up on the trial schedule of the courts. Also, juries come together one time for one case, and then the jury members go back to their ordinary lives. Each jury is made up of twelve ordinary citizens, with no special training. Most jurors try very hard to be fair to both sides, but due to the unique makeup of each jury panel, different juries will often reach different results, even when considering a similar set of facts and evidence.

The attempt to apply the traditional tort system to the growing number of injured workers in the burgeoning towns and cities of South Carolina (and, of course, many other states) quickly resulted in a mess. Some injured workers got fair compensation, but unfortunately, many did not. Some injured workers were unable to prove negligence on the part of their employer, and so even though they might be very badly hurt, or even permanently disabled, they would be entitled to no compensation whatsoever under the law! The slow and unpredictable nature of the tort system made life extremely difficult for the injured workers and their families, because there was no system in place to provide immediate medical care and financial compensation to allow the families to provide for themselves while waiting for their case to come to trial. Many would have to rely on the charity of their neighbors to survive. Children would be left alone at home while their caregivers had to attempt to make a living in the workplace, and children themselves often had to undertake difficult and dangerous work to try to survive.

This system was also less than ideal for the employers themselves. It was difficult to predict how much an employer would have to pay to an injured worker, or even whether they would have to pay anything at all. This made it impossible to set aside a predictable amount of money to cover workplace injuries. For example, two workers might lose a hand in a factory every year, but due to the



unpredictability of the tort system, one might be awarded a great deal of money, while another might get very little or even none at all.

The solution came early in the twentieth century with the introduction of the first workers compensation laws. Wisconsin passed the first comprehensive workers' compensation law in 1911, while Mississippi was the last state to jump on board in 1948. These early laws required employers to provide medical and wage replacement benefits for injured workers. If the injured employee accepted these benefits, the employer could not be sued.

Today, this basic structure for workers' comp is essentially the same. Most states require employers to carry workers' compensation insurance for full- or part-time employees.

The South Carolina Industrial Commission was created in 1935 to administer the new workers' compensation laws. The purpose of these laws was to address the difficulties created for both injured workers and their employers under the traditional tort system. These laws created an alternative justice system more closely tailored to the needs of injured workers and their families, and employers in South Carolina.

Often referred to as the "Grand Bargain," these laws allowed injured workers to get benefits like medical care and income replacement much faster, and because awards were capped, the amount of money set aside by employers was much easier to predict, and in fact an entire industry of workers compensation insurance was created to allow costs to be spread out. In exchange for these faster and more predictable benefits, however, the workers of South Carolina had to give up their right to sue their employers or their co-workers in the traditional tort system.

### *The South Carolina Workers' Compensation System*

The new workers' compensation laws removed the issue of liability from the analysis. An injured worker does not have to prove that his or her injury was due to another person's negligence. The injury could be caused by the injured worker's own negligence, the employer's negligence, or even a co-worker's negligence – so long as the injured worker was hurt in the course and scope of employment, meaning they were hurt while performing some task in connection with their work.

The goal of workers compensation benefits is to get injured workers through their period of recovery with a minimum of financial loss, and to get injured workers the treatment they need to return to the workforce.

### **Workers Compensation Benefits**

If a worker is injured in the course and scope of employment, he or she is entitled to the following benefits:

#### 1. Medical Treatment

Employers are required to provide medical care to the injured worker. The employer has the right to choose the medical provider, but this right is not without limitations – the chosen doctor must be competent to treat the worker’s injury, and must provide adequate treatment.

Employers must provide treatment for as long as necessary, so long as the treatment is reasonably expected to lessen the injured worker’s disability. In some cases, injured workers are entitled to lifetime medical benefits as necessary to treat or manage the injury-related condition.

#### 2. Financial Compensation

Financial compensation for injured workers under workers compensation generally falls into two categories: *temporary* compensation and *permanent* compensation.

##### *Temporary Total Disability*

Temporary total disability compensation (TTD) is a weekly amount of money paid to the injured worker while he or she is unable to work. The amount of money paid is based on the average weekly wage for that employee. The average weekly wage is usually<sup>2</sup> calculated by looking at what the employee

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<sup>2</sup> As with most legal rules, there are some exceptions, if the normal rule would create a grossly unfair result.

earned in the year leading up to the injury and dividing it by 52 weeks, up to a capped amount – although different calculations can come into play if this would result in an injustice to the injured worker.

When injured workers are unable to work at all, or if they have been placed on light duty and the employer does not have light duty work available, the workers are entitled to receive two-thirds of the average weekly wage, a number known as the compensation rate, every week while out of work.

### *Light Duty Work*

In some cases, the injured worker is able to do some work tasks but not others. For example, a truck driver may be temporarily unable to drive due to a back injury, but may be capable of working at a desk as a dispatcher. This is known as light duty work. The employer has the option to either offer light duty work to the injured worker, or to pay temporary compensation while the worker recovers at home.

Typically, light duty work is based on the temporary restrictions assigned by the treating medical provider. For example, a doctor may fill out a work restrictions form, which the injured worker should take to a supervisor to see if light duty work is available.

The issue of light duty work can become complicated in several ways. For example, some employers offer light duty work, but that work may not pay as much or may result in reduced hours. In cases where an injured worker is doing light duty work, but making less than their calculated average weekly wage, the employer must pay temporary partial disability (TPD), which is two-thirds of the difference between the average weekly wage and the amount actually being earned by the injured worker.

### *Temporary Partial Disability*

Sometimes, an injured worker can still show up for work, but has medical restrictions limiting the number of hours that can be worked in a day, or that limit the worker to a lower-paying position. In this scenario, if the worker brings home less than their average weekly wage, he or she is entitled to temporary

partial disability benefits. TPD benefits equal two-thirds of the difference between the Average Weekly Wage and the actual wages being earned.

For example, if an injured worker has an Average Weekly Wage of \$600.00, but is only able to make \$500.00 while on Light Duty, she would be entitled to two-thirds of the \$100.00 shortfall, or \$66.67, per week.

### *Permanent Disability Compensation*

Permanent disability compensation is calculated after the injured worker has reached maximum medical improvement, which means that the doctors are not recommending any more treatment that will improve the function of the injured worker's body. Medical treatment may still be required to maintain the worker's level of function but is not expected to result in any significant improvements. Doctors generally evaluate whether the injury is likely to be permanent, and will often assign an impairment rating, which is expressed as a percentage. For example, a person who had shoulder surgery may not have as much range of motion or strength in the affected body part. The doctor would generally refer to a book known as the *AMA Guides to the Evaluation of Permanent Impairment* to determine the appropriate rating number. Even going by the *AMA Guides*, however, different doctors may have different opinions about the exact rating value for the same injury. To further complicate this issue, there are different editions of the *AMA Guides*, with some doctors preferring older editions to newer ones.

Each body part has a specific cap on benefits<sup>3</sup>. For example, the arm has a cap of 220 weeks of compensation. That means that if the arm is found to be 100% disabled, the award would be calculated by multiplying 220 times the Compensation Rate. If the arm were 50% disabled, the award would be 110 (50% of 220) times the compensation rate.

In some cases, the injured worker's injuries will prevent him or her from returning to work in the same job, or even returning to the workforce at all. The Workers Compensation Act treats these cases in two ways:

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<sup>3</sup> To complicate matters, the caps for some body parts are found in a statute, S.C. Code Ann. Section 42-9-30, and caps for other body parts are found in a regulation: Reg. 67-1107. There are other laws covering things like vision and hearing loss.

## 1. Loss of Earning Capacity

If the injured worker is able to return to work in some capacity, but is not able to earn the same wages as before, he or she may be entitled to an award for loss of earning capacity. The worker generally must prove this loss by retaining an expert witness known as a vocational expert to investigate the case and give a written report, known as a vocational report, which details the jobs available to the injured worker, and how much the worker can expect to make in those jobs.

## 2. Permanent and Total Disability

Sometimes, an injured worker's permanent disability is so great that he or she cannot return to work in any capacity, and thus qualifies for an award of permanent and total disability. In most cases, this means that the injured worker receives the equivalent of 500 weeks of compensation at their compensation rate. Usually, this is awarded in the form of a lump sum, but not always.

### *The Single Body Part Rule*

Loss of earning capacity awards and permanent and total disability awards are only available to injured workers who have more than one affected body part as a result of the work injury – with the exception of a back injury. For example, a worker who has an injury to one leg only cannot legally qualify for one of these awards, but if that worker also has an injury to any other body part, even just a finger, he or she would be allowed to make a case for loss of earning capacity or permanent and total disability.

### **Lifetime Benefits Cases**

If the injured worker has a serious physical brain injury, paraplegia (paralysis of both legs), or quadriplegia (paralysis of the arms and legs), he or she can be entitled to receive weekly compensation checks for the remainder of life. Partial lump sums are available with the approval of a Commissioner to pay for things like home modifications and special vehicle modification to accommodate

medical equipment such as wheelchairs. These lump sums shorten the duration of compensation.

Physical brain injuries are often difficult to prove, and require testing with a special kind of doctor called a neuropsychiatrist or neuropsychologist. These can be among the most complex cases in workers compensation, and they typically result in the highest financial awards.

Most people are familiar with the idea of paraplegia and quadriplegia paralysis, but many people do not realize that many paralysis injuries are *partial*, meaning that the injured person has some function remaining in the affected limbs. Partial paraplegia or quadriplegia cases, like physical brain injury cases, require special testing and diagnosis by the proper specialist doctors, and can result in the highest awards in the workers compensation system.

### **Workers' Compensation Procedures**

The South Carolina Workers' Compensation Commission was created to administer the state workers compensation laws. It consists of seven Commissioners, who are appointed by the Governor and confirmed by the South Carolina Senate. The Commission offices are located in Columbia, but the Commissioners hold hearings all around the state for the convenience of injured workers.

Commissioners decide issues of law and issues of fact in workers' compensation cases. Cases are initially heard by a Single Commissioner, in a procedure similar to, but typically less complicated than, a short jury trial. The Single Commissioner hears testimony, reviews other evidence such as medical records and expert witness reports, and then renders a decision. Usually, the Single Commissioner issues the decision in the form of order instructions, and instructs one of the attorneys to write an order memorializing the decisions made in that case. The Single Commissioner then reviews the order and, if it meets the requirements of the instructions, signs the order.

#### *The Hearing Process*

Often, when problems or disagreements arise in a case, lawyers for injured workers are able to work with the insurance companies and their defense lawyers to find a solution which is acceptable to everyone. However, sometimes this is not possible, and either side (or both) has the option to request a hearing with a Single Commissioner. Typically, it takes between two and three months after making the request for the case to come up for a hearing.

The Claimant (injured worker)/Claimant's attorney has the right to request a hearing by filing a form known as a Form 50. A Hearing Request must be accompanied by a \$50.00 filing fee. It usually takes about 90 days from the date of the Hearing Request for that hearing to take place.

The Employer, its Insurance Carrier, or the defense attorney has the right to file a Form 21 to request a hearing. Form 21 Hearing Requests only take about 60 days or less to occur.

At the hearing, each side is allowed to present evidence for the Commissioner to consider, such as medical records, and the Claimant and any other witnesses are allowed to testify. However, there are strict rules and time limits that must be followed for evidence to be admissible, just like in a jury trial.

After the hearing, the Commissioner will issue his or her ruling, which can be appealed by either side.

### *Appeals*

Either side, Claimant or Defense, can appeal the order of a single Commissioner to an Appellate Panel, consisting of three other Commissioners who review the ruling of the Single Commissioner and determine whether any errors were made.

If a party believes that the Appellate Panel made an error in its decision on review, he or she may appeal that ruling to the South Carolina Court of Appeals, and from there, to the Supreme Court of South Carolina.

## **The Role of the Workers Compensation Attorney**

The laws concerning workers compensation in South Carolina can be found in three main sources. All of these sources are available in written form at the Law Library at the University of South Carolina School of Law in Columbia, and at other Law Libraries. They are also available online via various paid and free websites.

### 1. Statutes

Statutes are created and voted on by the South Carolina General Assembly, which consists of the House of Representatives and the Senate. Statutes can be and often are changed, and new statutes are enacted on a regular basis.

### 2. Regulations

The law allows the Workers' Compensation Commission to create regulations, which are rules and procedures for litigants to follow in dealing with the Commission. Regulations detail the procedures for starting and stopping compensation, filing hearing requests and motions, hearing procedures, evidentiary rules, and many other aspects of claims and hearings.

### 3. Case Law

When litigants believe that a ruling of the Workers' Compensation Commission contains an error of law, they can file an appeal with the Court of Appeals, and then the Supreme Court of South Carolina. The role of the appellate courts is to interpret and apply the statutes created by the Legislature. They often issue written opinions clarifying what the statutes mean, and how they should be applied to certain situations by the lower courts and the Workers' Compensation Commission. Once a higher court has ruled on an issue of law, the lower courts and the Commission are supposed to follow the new guidance.

New case law comes out all the time. The Court of Appeals and Supreme Court issue dozens of new decisions each month, and some of them involve workers' compensation laws. Lawyers subscribe to the Advance Sheets, which are



published by the Courts almost every week, and which contain the latest legal decisions.

As you can see, workers' compensation lawyers must stay up to date with a great deal of information from multiple sources, and which changes on a regular basis. Your lawyer's job is to help you, the injured worker, understand the laws that apply to your case, and advise you on the best course of action to take. Lawyers are also expected to be familiar with the medical terminology used by doctors and other professionals, and understand the purposes and goals of the treating physicians.

### **Settlements**

Every workers' compensation claim comes to an end at some point, usually soon after the injured worker reaches maximum medical improvement. The vast majority of workers' compensation claims in South Carolina are concluded by a settlement. Settlements are voluntary. For a settlement to occur, the insurance company or employer must make an offer, and the injured worker must agree to accept it. Commissioners cannot force either side to settle.

There are generally two common types of workers' compensation settlement in South Carolina – the Form 16A settlement, and the Clincher settlement.

#### *Form 16A Settlements*

The Form 16A settlement is so called because it is recorded on a form promulgated by the Commission, which is numbered 16A at the bottom. Settlements on this basis usually contain an agreement on how much compensation the injured worker is to receive, and an agreement about what future medical treatment the employer is required to provide.

After a Form 16 settlement, the injured worker has one year to file a claim based upon a change of condition. A change of condition means that the original injury the worker sustained has worsened to the point that more treatment is required. A change of condition claim must be filed on the appropriate forms, and

must include a written statement or other medical evidence from a medical provider that the condition has gotten worse.

### *Clincher Settlements*

In a clincher settlement, also known as a full and final release settlement, the injured worker agrees that he or she gives up the right to make a claim for a change of condition, and agrees that the employer or insurance company is not required to provide any future medical care or compensation for that injury. Usually, the insurance company/employer is willing to pay more money for a clincher settlement than for a Form 16A settlement.

### **The Role of the Injured Worker's Attorney in Settlements**

A big part of the injured worker's attorney's job is helping navigate the settlement process. There are many factors to consider in deciding whether to accept a Form 16A settlement or a clincher settlement, or even whether to settle at all! It depends on the individual circumstances, both medical and financial, of the injured worker, and on a careful application of the workers' compensation laws and regulations to the facts of the case. Attorneys also help negotiate the settlement terms with the employer or insurance company. This can even include going to a mediation, which is a formal process designed to facilitate a settlement between the parties. Mediation is so effective that it is now required in cases where the injured worker is alleging permanent and total disability. If you have been seriously injured on the job, it is important that you choose a lawyer who is knowledgeable, experienced, and skilled in handling workers' compensation claims.

### **When To Hire A Lawyer**

As you can see, while it is possible for an ordinary person to deal with the legal ramifications of a work injury on his or her own, such as a minor cut or broken finger, the more complex the issues are, or the more damages there are, the greater the likelihood of a bad outcome without a lawyer. A qualified, knowledgeable workers compensation attorney can almost certainly obtain more money for injuries that require more than just one visit with a doctor – especially injuries that require follow up treatment with a physical therapist or specialist. I would suggest that a lawyer should be consulted in any case where:

1. The Employer is NOT COOPERATING with filing the claim.

2. You are worried that the Employer will fire you, or you have been fired.
3. Cases involving a CAR WRECK or other injury caused by someone who is not employed by your Employer.
4. The Adjuster does not accept the claim (claim denied).
5. The Adjuster is not approving or scheduling treatment in a timely manner.
6. The Adjuster is not sending your weekly checks on time.
7. The Adjuster is not responding to your calls.
8. Your medical treatment is NOT HELPING YOUR SYMPTOMS.
9. There is SIGNIFICANT INJURY – broken bones, orthopedic injuries, head injuries and concussions, dental injuries, major cuts and bruises, scarring, surgeries, dental injuries, and so on.
10. There is potential BRAIN or SPINAL CORD INJURY – these can result in lifetime benefits when handled properly.
11. The injury requires SURGERY, which is likely to lead to PERMANENT IMPAIRMENT or SCARRING.
12. Cases where the Adjuster just won't make a FAIR OFFER.

## Is It Expensive to Talk To A Lawyer?

No! Most workers' compensation lawyers do not charge an initial consultation fee, but be sure to ASK before going to an appointment. The most it will cost is a few minutes of your time.

At Lee Injury Law we are always happy to discuss your case and offer guidance – even if you are not ready to hire a lawyer yet. Call us anytime at 803-500-0000.

## Ok, But Is It Expensive to HIRE a Lawyer?

It usually does not cost you any money up front. Workers' compensation lawyers are generally paid based on a contingency fee, meaning a percentage of the money collected for the client, plus expenses. For most lawyers, if they don't get you money for your case, you don't have to pay anything. Again, be sure to ask any lawyer you are considering hiring for your case about how the fees and expenses are calculated.

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