



WORK INJURY GUIDE
SAFETY EMPLOYEES

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BY CALIFORNIA STATE BAR**

Making a false or fraudulent workers' compensation claim is a felony subject to up to 5 years in prison or a fine of up to \$50,000 or double the value of the fraud, whichever is greater, or by both imprisonment and fine.

INTRODUCTION

This pamphlet was created to assist safety employees who are injured at work.

This pamphlet is especially important if you currently do not have an attorney representing you. If you do have an attorney, then we recommend you follow your attorney's advice.

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Workers' Compensation and Retirement

Workers' compensation issues can be very complicated. The purpose of this guide is not to educate you on the ins and outs of workers' compensation. Rather, this guide is designed to cover with SAFETY EMPLOYEES some very basic issues with workers' compensation and benefits which are unique for safety workers. We also want to make sure you know the three different types of retirement for which you may be eligible, one of which is only eligible for employees classified as safety workers.

Workers' compensation provides an injured worker with several types of benefits (these benefits plus other general workers' compensation issues are also separately discussed in our Work Injury Guide):

Medical Treatment - The Labor Code specifies that injured workers are entitled to reasonably necessary medical treatment to cure or relieve the injured worker's injury. This would mean an injured worker is not required to pay co-pays or any portion of the cost of medical care. Injured workers are also entitled to reimbursement for mileage traveled to and from medical appointments, physical therapy, pharmacy visits, etc.

Temporary Disability (TD) - TD is designed to compensate injured workers with wage loss if they are unable to work due to an industrial injury. As will be discussed below, safety employees receive special TD benefits provided by the Labor Code, which can be full pay for up to a year of time off caused by an injury. With limited exceptions, TD is only payable for 104 weeks.

Permanent Disability (PD) - PD is designed to compensate injured workers for residual difficulties resulting from an injury, loss of function, loss of strength, etc. That does not mean that an injured worker cannot return to work. Many injured workers are able to return to work even with limitations they did not have before.

Supplemental Job Displacement Benefit (SJDB) - This is a very modest benefit, now capped at \$6000, to assist an injured worker, who cannot return to work, with obtaining some training or other assistance to get another job.

Death Benefits - If an injured worker dies due to a work injury, the injured worker's dependents, spouse, children, etc., would be eligible for death benefits.

Safety Cases Are Different

California workers' compensation laws provide special benefits to most safety workers.

It's important to contact an attorney who works with safety employees when you are injured on the job.

Types of Safety Employees

Our law firm focuses on safety employees who work in Humboldt and Del Norte Counties. We also represent employees who work in Trinity County (on our side of the Trinity Mountains.)

In Humboldt, Del Norte and Trinity Counties, we see injuries to these safety employees:

- CDCR at Pelican Bay State Prison & Conservation Camps
- California Highway Patrol
- CAL FIRE Fire Stations & CDCR Conservation Camps
- County Law Enforcement

- City Law Enforcement
- City, County, and Volunteer Firefighters
- Fish & Wildlife
- Park Rangers

Presumptions

Presumptions vary based on the type of safety employee you are, but presumptions can be a powerful benefit for safety employees who are injured on the job.

The burden of proof for an injury in a worker's compensation case is on the injured worker. There are exceptions to the rule, but in most situations if you are eligible for a presumption, the defendants have to prove that there is no injury instead of the injured worker having to prove an injury.

Presumptive injuries include heart, lower back provided you wear a duty belt, pneumonia, tuberculosis, Lyme's disease, hernia, meningitis, blood borne illness, cancer, MRSA, and biochemical exposure. Those type of injuries are given special consideration by workers' compensation courts for safety workers.

Again, not every safety employee receives each of these presumptions. You should speak to an attorney to ascertain which presumptions apply to you.

The Heart Presumption

If your safety position is eligible for the heart presumption, it's important to understand your potential rights:

- If heart trouble manifests or develops while you are working in your safety job, then it is presumed to be work related.
- The presumption continues after you stop working or retire; this continues up to five (5) years after your last date worked.
- The Labor Code describes heart trouble as one which **develops** or **manifests** while employed or within the post-separation time period. Hence, if you sustained a heart attack, or suffered some type of heart trouble, more than five years post separation, you could still be covered by the presumption if a physician believes your heart trouble actually developed while employed or within the post-presumption time frame. Some heart

conditions develop but may not manifest until years later.

- There are situations where you can win the workers' compensation case beyond five (5) years if the condition manifested itself within the presumption period.
- If a heart attack causes death, your spouse / dependents could be entitled to death benefits.
- If you had a heart attack or bypass surgery five (5), ten (10), or even fifteen (15) years ago and did not file for workers' compensation benefits, the time limits to file may not apply to you.
- If you have a heart attack or bypass surgery after the presumption period (up to five [5] years), you still may be entitled to the presumption, because it matters when the heart condition manifested or developed not when the heart attack or bypass surgery occurred.
- The statute of limitations does not begin until the eligible safety employee knows or should have known the heart condition could be caused by work. It's possible for you to file a claim and win even years after heart trouble began.

We recommend that prior to your retirement, consider these suggestions:

- Get a complete physical exam by your personal physician. Ask for a heart scan, such as an EBCT Heart Scan, which may or may not be covered by your insurance; it can cost \$150.00 to \$600.00.
- If you have high blood pressure, ask your doctor to schedule an echocardiogram. It's a non-invasive study that detects abnormalities of the heart.

Essential Job Functions / Job Descriptions

In safety cases, having an understanding of your essential job duties or your HR departments' job description of your safety position can be a critical part of handling multiple issues in your case (i.e. CHP critical tasks, CDCR CPO essential job functions).

We recommend you obtain a job description from your HR department and review it to ensure that it accurately reflects your job duties; then provide a copy to your physician who is to assess your ability to do the job.

Full Salary in Lieu of Temporary Disability

Temporary disability is normally two-thirds (2/3) of your average weekly earnings subject to state maximums.

Not all, but many safety workers are entitled to full salary in lieu of temporary disability.

Industrial Disability Leave (IDL)

If you are a safety employee who are not eligible for full salary in lieu of temporary disability, you are most likely entitled to Industrial Disability Leave (IDL).

IDL is salary continuation in lieu of temporary disability. IDL provides full “net” salary for the first twenty-two (22) work days of disability (or 176 hours). Net pay is gross pay minus taxes, retirement, Social Security and Medicare (assuming these items are normally deducted from your paycheck; it varies based on type of employee.)

After that time, payments will be based on two-thirds (2/3) of your average weekly gross earnings for up to 2080 hours for full-time employees.

If you used IDL beyond 176 hours, you can supplement up to your full net salary with leave benefits. This is known as IDL with Supplementation.

The advantage of IDL is that you can keep your current standard of living while off on disability. Tip: If you can live without supplementing with your leave benefits, you should consider doing that, because you may need those benefits at a later time.

One last point: If your injury is due to an assault, you could be eligible for Enhanced IDL (EIDL). Discuss the issue with your attorney.

TYPES OF RETIREMENT

Industrial Disability Retirement (IDR)

Industrial Disability Retirement is available to most safety workers who sustain one or more work injuries which render the employee "*substantially incapacitated from performing the usual duties of his or her position.*"

The primary benefit of IDR is the first 50% of monthly gross earnings is non-taxable; in other words, the first 50% of your retirement is non-taxable.

Example: If you are less than retirement age, your IDR would be 50% of your regular monthly salary. If you are eligible for service retirement, your IDR would be a minimum of 50%, but if you are eligible for more than 50%, i.e. 60% or 75%, you will receive that percentage, and the first 50% would be non-taxable. i.e. if you qualified for 75%, 50% would be non-taxable, 25% would be taxable.)

If you have one or more work injuries that causes you to be unable to perform your essential job functions, then IDR should be a consideration.

Disability Retirement (DR)

If you are found to be “*substantially incapacitated from performing your usual duties,*” you have been employed at least 5 years, and that disability is not caused by a work injury, then you might be eligible for Disability Retirement (DR).

Disability retirement is taxable. This is an important distinction in understanding the difference between IDR and DR.

Important Point #1

A disability not caused by work means a disability that was caused by something away from work. If you are deemed eligible for Disability Retirement for a disability that you feel was caused by work, and you were approved for Disability Retirement, then read the section below: "Disability Retirement Approved."

Important Point #2

Don't assume your disability isn't work-related. If it's due to a heart condition, you now know your heart condition is presumed work-related. If it's an orthopedic condition, i.e. back, your back problem could be due to your work activities. Ask an attorney about whether your disabling condition could be due to your work.

Service Retirement

Assuming you have reached the minimum age for your position, and you have the required number of years of service (normally five years), you may apply for Service Retirement.

Service retirement is available to all who have the required time; obviously, the amount of time put in increases your monthly retirement benefit.

Service Retirement Pending IDR

CalPERS has an option to those who are applying for IDR and who are eligible for Service Retirement.

The advantage of applying for Service Retirement Pending IDR is that Service Retirement can be approved in a very short time (usually a few weeks). This is important because an IDR application can take six (6) to twelve (12) months. You can collect Service Retirement while you are awaiting for the IDR application.

The disadvantage of applying for Service Retirement Pending IDR is that normally when you request Service Retirement, you are giving up your job for retirement.

If you aren't approved for IDR, then you cannot automatically return to your job; reinstatement is required and this does not happen in every situation.

Service Retirement Pending IDR is ideal for people who know they are not returning to their jobs, so those people are retiring whether or not they are approved for IDR.

Assuming IDR is approved, your IDR benefits are retroactive back to when you applied for IDR.

If eligible for this option, you need to be sure retirement is the route you want to go, because you could be “stuck” with the decision.

DR Approved

If a CalPERS letter or any other communication determines that you are “*substantially incapacitated from performing your usual duties*” and finds you are eligible for Disability Retirement, denies IDR, will not make a determination for IDR, or if the disability you have *in your mind* is caused by work, then you should take legal action immediately.

As stated above, if DR is approved, then make sure you talk to a workers’ compensation attorney before you assume your disability is NOT work-related. Failure to take action could **bar** your rights to IDR and/or workers’ compensation benefits forever.

Conclusion

We hope this has provided you some additional information as it relates to your rights that can arise out of a work injury.