

WORK INJURY GUIDE

SAFETY EMPLOYEES

WELLS LAW

WORKERS' COMPENSATION

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***CERTIFIED SPECIALIST IN WORKERS' COMPENSATION
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 to provide SAFETY EMPLOYEES with some very basic issues with workers' comp, 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:

Medical Treatment—The labor code specifies that injured workers (IW) are entitled to reasonably necessary medical treatment to cure or relieve the IW's injury. This would mean an IW is not required to pay co-pays or any portion of the costs of medical care. IW's are also entitled to reimbursement for mileage traveled to and from medical appointments and/or the pharmacy to pick up medicines.

Temporary Disability (TD)—TD is designed to compensate IWs 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 IWs for residual difficulties resulting from an injury, loss of function, loss of strength, etc. That does not mean that an IW cannot return to work. Many IWs 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 IW, who cannot return to work, with obtaining some training or other assistance to get another job.

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

Safety Cases Are Different

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

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

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 workers. 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 have to prove an injury.

Injuries involving heart, pneumonia, tuberculosis, Lyme's disease, hernia, lower back, meningitis, blood borne illness, cancer, MRSA, and biochemical exposure are given special consideration by workers' compensation courts.

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.

- Many safety workers don't understand that the presumption continues after you stop working or retire; this continues up to five (5) years after your last date worked.
- If you manifest or develop a heart problem within five (5) years after your employment separation date, then the presumption applies. This usually occurs when a safety person has a heart attack or is diagnosed with heart disease.
- 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 that causes death within the presumption period (up to five years), 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.

To assist in delivering benefits for a safety employee with a heart problem is to “spot it” before you retire or leave your job:

- Get a complete physical exam by your personal physician.
- 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.
- If LVH (left ventricular hypertrophy) or left atrial enlargement is detected, then have a EBCT heart scan performed.

Essential Job Functions / Job Descriptions

In safety cases, having an understanding of your essential job functions or your HR departments' job description on your safety position can be a critical part of handling multiple issues in your case.

We recommend you obtain a job description from your HR department and review it to ensure that it accurately reflects your job duties.

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)

Safety employees who are active members of CalPERS who aren't eligible for full salary in lieu of temporary disability are 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.

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 sick 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.

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 another words, the first 50% of your retirement is non-taxable.

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

Disability Retirement (DR)

If you are found to be “*substantially incapacitated from performing your usual duties*” 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 but denied IDR, then read the section below: "Disability Retirement Approved; IDR Denied"

Important Point #2

Make sure you don't assume a disability isn't related to work; a perfect example is safety workers with heart problems who don't realize that work at the very least contributed to their disability. Since a heart problem is typically something that occurs over time, many safety workers don't realize work was a contributing factor to their heart condition.

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 separately 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 depending on that workload of the CalPERS department that handles IDR. 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 can not 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 eligible 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.

A disability retirement attorney may not recommend you to file Service Retirement Pending IDR; if your employer is known for fighting your eligibility to IDR,

you should consult with a disability retirement attorney to determine the best strategy.

DR Approved; IDR Denied

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 and denies IDR or will not make a determination for IDR, because your disability is not found industrial (not work related), then you should take legal action immediately.

If you get a letter stating that your Disability Retirement is approved, but your IDR is denied, then it's likely your workers' compensation claim is denied. Our recommendation is that you should contact an attorney **immediately**. 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.