ABOUT THE AUTHORS:

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David H. Fink (now retired) was an attorney in private practice in Atlanta, Georgia. He authored the first edition of Injured on Job over 30 years ago. He has over 55 years of experience representing injured workers before the State Board of Workers’ Compensation in Georgia. He served on the Governor’s Workers’ Compensation Legal Advisory Council where he worked with representatives of labor and industry preparing proposals for improving the quality and quantity of workers’ compensation benefits available to Georgia workers. He has given training lectures on workers’ compensation to labor unions, including Teamsters, Laborers and others.

Micah (Mike) Fink represents only injured workers in his practice.
INJURED ON THE JOB

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Introduction

Few Georgia workers realize the valuable rights they have under workers’ compensation laws of Georgia. Most know that their employers should pay their medical bills if they are injured on the job, but almost all wait until they have actually suffered an injury before attempting to learn what benefits are available to them and what they must do to obtain these benefits.

Who can the injured worker ask about his rights under workers’ compensation? His fellow employees, supervisors, or union representative often have only a limited knowledge of the law and some of what they tell the injured employee may be incomplete or incorrect.

The purpose of this handbook is to answer for Georgia workers some of the most frequently asked questions about their rights under the Workers’ Compensation law.

The information set out in this handbook is based upon the law existing on and before July 1, 2019. Each worker should also understand that the legislature and the courts modify the law yearly. This handbook is not a substitute for current legal advice from a qualified attorney. Workers who are unable to resolve their workers’ compensation problems or obtain satisfactory answers to their questions should talk to an attorney who is trained and experienced in workers’ compensation law.

1. Q. What is workers’ compensation?

A. Workers’ compensation is accident insurance which covers most Georgia workers for injuries and diseases that come about as a result of the worker’s employment.

Before the passage of Georgia’s first workers’ (then Workmen’s) compensation laws in 1920, the only way a Georgia worker could recover the wages lost and medical expenses incurred as a result of a job related injury was to go into the local court and sue the employer. The worker had to prove that the employer was at fault in causing the accident and injury. It often took years before the employee’s case was reached by the court. It is estimated that only 15% of the injured employees were ever successful in making any recovery of their losses from the employers under this system. The workers’ compensation laws were passed to correct this situation and to give Georgia workers prompt and reliable relief from the effects of job related accidents, injuries and diseases. A special agency known as the Georgia State Board of Workmen’s (now Workers’) Compensation was created to administer delivery of the compensation benefits so workers would no longer have to rely on the civil courts.

The most important aspect of the workers’ compensation law was that it stated that the injured worker was entitled to benefits without regard to whose fault it was. The worker no longer had to prove that the employer was at fault in causing the accident or injury in order to be entitled to recover loss of wages and medical expenses. Thus, workers’ compensation is a “no fault” system.

2. Q. Are all the workers in Georgia entitled to workers’ compensation benefits if they have a job related injury?

A. No. There are certain categories of workers who are not covered by the Georgia Workers’ Compensation Act. These general categories of workers are:

(1.) employees of an employer who has less than three employees regularly working for him;
(2.) domestic servants;
(3.) most railroad employees;
(4.) U.S. government employees; and
(5.) independent contractors.
most farm works.

You should assume that there is workers’ compensation coverage for you even if it appears that you may be in an excluded category. Some employers who are not required to have workers’ compensation insurance provide it voluntarily. Also, there are some situations where it may seem that you are not covered, but coverage may actually be available to you. If your employer refuses to provide benefits to you claiming that you are not covered by the Act, you should seek an experienced workers’ compensation attorney to give you legal advice and make a proper claim with the State Board of Workers’ Compensation to preserve your rights.

3. Q. Are all the “injuries” that I might sustain in my employment covered by the Workers’ Compensation Act?

   A. The term “injury” is given a very broad definition by the Workers’ Compensation Act. “Injury” includes not only sudden accidents such as falls, but also includes many physical problems that come on gradually. Certain diseases are also compensable. Compensable “injuries” can also include heart attacks, strokes, infections and other conditions where it can be shown that the employment either caused the disabling condition or caused a pre-existing condition to become worse or combined with an underlying condition to cause disability.

   A new category of injury has been created by the Georgia legislature. A “catastrophic injury” is an injury that occurs on and after July 1, 1992, and involves any of the following:

   (1.) spinal cord injury with severe paralysis;
   (2.) amputation of an arm, hand, foot or leg;
   (3.) severe brain injury;
   (4.) second or third degree burns over 25% of the body or third degree burns over 5% or more of the face or hands;
   (5.) total or industrial blindness; and
   (6.) any other injury severe enough to prevent the employee from doing almost any work. Qualifying for Social Security disability benefits (SSDI) is strong evidence your injury qualifies as “catastrophic”.

   There are important differences in your rights to workers’ compensation depending on whether the injury you receive in your employment is determined to be “catastrophic” or “non-catastrophic.”

4. Q. Does the injury have to happen suddenly in order to qualify as a compensable accident under the Workers’ Compensation Act?

   A. No. An injury does not have to happen suddenly. The injury can come on slowly. Examples of the injuries that occur slowly are loss of hearing from exposure to loud noises, arthritis due to heavy lifting, carpal tunnel syndrome from repetitive activities, lung damage from breathing harmful dust, chemical fumes, etc. Whenever you are disabled or require medical care and your employment appears to be a cause, either all or in part, you should make a claim for benefits.

5. Q. Are there times that I may be entitled to workers’ compensation coverage although I am not actually doing my job when the accident happens or the disability occurs?

   A. Yes. Injuries which happen during recreational and social activities sponsored or encouraged by the employer and from which the employer gains some benefit, can be compensable under the Workers’ Compensation Act. Injury occurring during training sessions, while traveling between job sites, while you are in an “on call” status or out of the city of your residence for purposes of your employment may be covered. These can present difficult factual and legal questions. If the employer does not accept your claim, you should seek legal advice.

6. Q. Can I lose my workers’ compensation benefits if the accident which caused my injury was my fault?
A. No. Workers’ compensation is a no fault system. Simple negligence on the part of the worker will not cause the worker to lose his entitlement to benefits.

7. Q. If I fail to obey a company safety rule and this causes me to have a disabling accident, will I lose my entitlement to workers’ compensation benefits?

A. Possibly. If the rule is a safety rule meant for your protection and you knowingly and willfully break it, you could lose your entitlement to benefits.

8. Q. If I break the law, can I lose my entitlement to workers’ compensation benefits?

A. Possibly. For example, if you were driving a truck and just failed to see the light change causing an intersection accident, you would not lose your coverage. On the other hand, if you were drag racing in the company truck, you should expect to have a challenge made to your workers’ compensation claim on the basis of failure to follow rules and regulations meant for your own protection.

9. Q. Are there other ways I might lose entitlement to workers’ compensation benefits?

A. Yes. Willful misconduct, self-inflicted injury, intoxication, use of illegal drugs, refusal to use safety appliances, failure to give your employer prompt and full notice of the accident and injury, and willful failure to accept necessary medical treatment or refusal to submit to drug or alcohol tests are grounds for disallowing benefits. Note: Even though your case includes facts which might give the employer a defense to your claim, you should not let this stop you from making and pursuing the claim. Never assume your claim will be denied. Your employer may not recognize or use the defense. With proper legal representation, the effects of the employer’s defense to your claim may be minimized sufficiently to allow you to win your claim and obtain your disability benefits.

10. Q. I was injured while employed by a sub-contractor and he did not have workers’ compensation coverage for his employees. May I make a claim against the general contractor?

A. Yes. However, this type situation presents difficult factual and legal questions. Good legal advice is essential.

11. Q. I am unable to work because of a job related injury or disease. How much will my weekly benefits be?

A. The maximum weekly disability benefit for workers injured on and after July 1, 2019 is two-thirds of the workers’ average weekly wage, up to a maximum of $675.00 per week. This rate applies only to accidents that occur on and after July 1, 2019. See Question 29 for the maximum weekly rates that apply to workers injured before July 1, 2019. See Question 46 to determine when payments start.

12. Q. What is meant by “average weekly wage” and how is it computed?

A. Your average weekly wage is computed by adding your gross wages (before any deductions) in each of the 13 weeks you worked prior to your disability date and dividing by 13. Gross wages used in this computation should include the value of any food, per diem, housing, tips, or other compensation you receive in your employment.

If you have not worked 13 weeks for your employer prior to your disability, there are alternative ways of computing average weekly wage. These include multiplying your hourly or weekly wage rate as if you had worked a full 13 weeks prior to your disability or using figures from work you did in a similar employment or using earnings of an employee of the same employer who does work similar to yours.

13. Q. How long can I collect weekly income benefits under workers’ compensation for total disability?

A. The maximum period of payments is 400 weeks from the date of injury. The 400 week limitation
does not apply to “catastrophic” injuries. See Question 3 for definition of “catastrophic.”

14. Q. I have found a different job offering light work that I am able to do, but the pay is less than I was earning at my old job before I was hurt. Can I collect benefits for a partial loss of wages?

A. Yes. If your loss of earnings is the result of the injuries you received, you would be entitled to partial disability benefits. You would be entitled to receive two-thirds of the difference between your average weekly wage at the time of your injury and the wages earned after the injury, up to a maximum of $450.00 per week for injuries that occurred on or after July 1, 2019. For example: Joe is employed at an average weekly wage of $1000.00. He sustains serious injuries in a job related accident. After six months of total disability, he is able to go back to work but he is unable to do the work that he did at his old job. He gets a new job paying $400.00 per week. As a result of his partial disability, he has an earnings loss of $600.00 per week. He is entitled to two-thirds of his lost wages up to $450.00 per week, in this example, the maximum allowed. He can collect partial disability benefits for as long as his disability results in a loss of wages to him, but only up to a maximum of 350 weeks from the date of injury.

The maximum rates for temporary partial disability for injuries that occurred before July 1, 2019, are as follows:

<table>
<thead>
<tr>
<th>Date Range</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 1, 2001 – June 30, 2003</td>
<td>$268.00</td>
</tr>
<tr>
<td>July 1, 2003 – June 30, 2005</td>
<td>$284.00</td>
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<tr>
<td>July 1, 2005 – June 30, 2007</td>
<td>$300.00</td>
</tr>
<tr>
<td>July 1, 2007 – June 30, 2013</td>
<td>$334.00</td>
</tr>
<tr>
<td>July 1, 2013 – June 30, 2015</td>
<td>$350.00</td>
</tr>
<tr>
<td>July 1, 2015 – June 30, 2016</td>
<td>$367.00</td>
</tr>
<tr>
<td>July 1, 2016 – June 30, 2019</td>
<td>$383.00</td>
</tr>
<tr>
<td>July 1, 2019 – To the present</td>
<td>$450.00</td>
</tr>
</tbody>
</table>

15. Q. The doctor has released me to return to my regular work. He tells me that I will have a 25% permanent partial disability to the injured portion of my body as a result of my job related injury. When I go back to work I will be earning as much or more than I earned before I was hurt. Can I collect anything for my permanent partial disability when it doesn’t cause me a loss of earnings?

A. Yes. The law provides benefits to a worker who sustains permanent loss of use to a portion of the body as a result of injuries sustained in his employment. Benefits are payable even if the worker is able to return to work at the same or greater wage. For example: Joe suffered a ruptured disc in his back while lifting a box in his employment. He had back surgery. After 40 weeks of complete disability, the doctor said he could go back to work. The doctor also said Joe had a 20% disability to his back which was permanent. Even though Joe went back to his old job at the same pay and did not experience any loss of wages after his return to work, he is entitled to an additional payment for the permanent partial loss of use to his back.

The schedule found at the back pages of this booklet shows the number of weeks of benefits payable for permanent partial disability to particular portions of the body. Each particular portion of the body listed shows the maximum number of weeks of partial disability payments that can be received. An example of how this works is as follows: Joe suffers an injury to his leg in his employment. He eventually returns to his regular job. The doctor says that Joe has a 20% permanent partial loss of the use of his leg. The maximum number of weekly benefits for total loss of a leg or loss of use of a leg is 225 weeks. Since Joe has a 20% permanent partial disability to his leg, he is entitled to receive 45 weeks of benefits (20% x 225 weeks = 45 weeks) at the same rate he was paid while off work due to the job injury.

*The change from total disability benefits to permanent partial disability benefits should not be done
until the injured employee has returned to work, or has been released to return to regular work without any restrictions.

16. Q. My spouse was killed in a job related accident. What benefits are available to me under workers’ compensation?

A. Minor dependents of the deceased employee can receive benefits until they reach age 18, or until age 22 if they are in college or in vocational training. Other rules apply for physically or mentally handicapped children. If the spouse is the only dependent of the deceased employee, the payments may not exceed a total of $270,000.00 for deaths occurring on or after July 1, 2019. The payments to the dependent spouse stop after 400 weeks or after the spouse reaches the age of 65, whichever is longer. Death benefits also end if dependent spouse re-maries. Also covered are medical expenses incurred by the employee prior to death and up to $7,500.00 for funeral and burial expenses.

17. Q. My son was killed in a job related accident. He was not married and did not have any children. Am I entitled to any benefits other than reimbursement for funeral and medical costs?

A. No. If the employee does not have a spouse or dependent child at the time of his death, no weekly benefits are payable to other heirs or relatives unless it can be shown that the deceased employee was providing support to them at the time of his death. The definition of ‘support’ can be quite broad. Be sure to consult an attorney if questions arise in this area.

18. Q. Can a common law spouse or the illegitimate children of an employee who dies as a result of a job related injury or disease recover workers’ compensation benefits?

A. Yes. They are not excluded from benefits merely because of their status as a common law spouse or illegitimate child. Problems involving dependency, step children, common law wives, and similar situations are complex. If such situations arise, an attorney should be consulted.

19. Q. I work two different jobs with two different employers. I was hurt on one job, but now I can’t work either one. How are my weekly benefits computed?

A. If you were doing similar work for both employers, you may be able to use your combined earnings from both jobs to compute the rate for your weekly benefit. Be alert to this possibility and seek qualified advice if you have questions in this area. However, your weekly benefit may not go over $675.00.

20. Q. What medical benefits does the workers’ compensation law provide?

A. The employer’s workers’ compensation insurance carrier is required to pay for all the medical care necessary to treat a job related injury or disease. This includes doctors, x-rays, drugs, hospitals, therapists, and all other treatment necessary to give relief or provide a cure. Treatment by a chiropractor, psychologist, etc., can be included where the treatment is authorized by the employer, the employer’s compensation insurance carrier or the State Board of Workers’ Compensation. Charges for prescribed drugs and medical apparatus such as crutches, canes, braces, supports, artificial limbs, etc., are also included. The employer/insurer is not required to pay for a private room in case of hospitalization unless the doctor requests it. Treatment with any physician not chosen from the list provided by your employer may not be covered.

21. Q. Can I get reimbursed for the cost of transportation back and forth to hospitals, doctors and other medical care facilities?

A. Yes. The employee should keep in mind that the employer is required to reimburse him for the reasonable costs of transportation required to get medical treatment. This includes parking fees (save the receipts) and mileage at the rate of 40¢ per mile in those cases where the employee uses his own vehicle or gets someone to drive for him. Travel to get prescriptions is included. Reimbursement of mileage must
now be made to the injured worker within 15 days of the date the employer or their insurance representative receives the mileage or a late penalty can be applied. However, mileage and related travel expenses must be submitted to the employer within one year of their occurrence or they will be denied.

22. Q. If my injuries cause me to be unable to return to my job or find other work I can do, can I demand that my employer provide vocational rehabilitation services for me?

A. Injured employees are now divided into two different groups and their entitlement to vocational rehabilitation services depends upon which group they are in. The groups and their entitlement are:

Catastrophic Injury: The injured employee is entitled to vocational or return to work type of training only if his injury is very disabling and the injury has been designated as “catastrophic” by the Board and the injured worker wishes to pursue such retraining.

Non-Catastrophic: Vocational training is typically not provided.

23. Q. The accident I had at work left me with scarring on my chest and arms. I also have occasional pain around the scars. I am back to work at the same wage I received before the injury. Can I receive any payment for my disfigurement or for my pain and suffering?

A. No. Disfigurement and pain and suffering that do not result in an economic injury (loss of earnings) or disability (loss of use or function), are not compensable under the present law in Georgia.

24. Q. I had arthritis before I started my job, but my job made it worse and now I can’t work at all. Am I entitled to workers’ compensation benefits?

A. Yes. Your job does not have to be the sole cause of your disability. If an accident on your job, or just the performance of your duties, has caused your prior ailment to become worse and you suffer a disability as a result of a combination of the pre-existing ailment and your job duties, you are entitled to compensation.

25. Q. Can I get workers’ compensation benefits if I get a disease as a result of my employment?

A. Yes. Benefits are payable to you if you are injured from chemical poisoning, exposure to x-rays, asbestosis, silicosis, or other diseases or conditions which come about as a result of your employment. Claims for compensation for industrial diseases are often resisted by the employer. The worker would be wise to seek legal advice promptly if there is any evidence to indicate that he or she is the victim of a job related disease. The possibility that the employee may be entitled to workers’ compensation benefits should be explored even if it is many years between the employment where the employee was exposed to a disease causing substance and discovery of the disease.

26. Q. I have been receiving weekly workers’ compensation disability payments for nine months and it looks like I may be unable to return to work for a long time. Can I get my employer to pay a negotiated amount of my future benefits in a lump sum settlement?

A. Likely. Where the disabled employee is receiving weekly benefits, the employee, and sometimes the employer, may want to negotiate a payoff of benefits now rather than have them paid over a period of weeks or years. If all parties agree to this (settlement is always voluntary, never required), a negotiated, lump sum payment of benefits can be paid to the employee quickly. However, there are many factors that go into calculating the value of such a final settlement that require an experienced attorney. If the employer/insurer will not agree to a lump sum payment, the injured worker may only receive the weekly benefits they were already getting along with medical treatment. In some circumstances, you can also petition the State Board of Workers’ Compensation to force a smaller, lump sum payment based on a permanent disability rating to pay back bills, mortgages, etc. However, the Board will not usually grant a lump sum payment unless
the employee can show that the funds will be used to prevent personal hardship, i.e., loss of home, vehicle, utilities, etc. This requires specialized forms and the assistance of an experienced attorney is often necessary.

27. Q. When may I apply for a lump sum or advance payment to avoid personal hardship?

A. You may apply only after you have received 26 weeks of disability payments. An advance is not usually granted by the State Board of Workers’ Compensation unless the employee can show that there is or will likely be a permanent partial disability rating as a result of the injury and can show financial hardship.

28. Q. When is my employer permitted to stop paying me weekly disability benefits under workers’ compensation?

A. As a general rule, the employer may stop wage loss benefits when the employee returns to work or when the authorized treating doctor says the employee is able to return to regular or normal work without limitations.

The employer may cut off wage loss benefits when the doctor gives a full release to return to work even though your employer refuses to take you back to work.

The employer must give the employee notice of this intention to stop wage loss benefits 10 days before the date when the employer will make the last wage loss payment.

There are additional rules regarding how long an injured employee is entitled to wage loss benefits:

1. For employees who are not released to return to any work, total wage loss benefits are payable for a maximum of 400 weeks or approximately 7.7 years.

2. For employees who have been given a return to work with limitations by the authorized treating physician, but have not been able to return to work, benefits are limited to 52 consecutive weeks of temporary total wage loss payments. After the employee has received 52 weeks of these payments while in this status, the employer is entitled to change the payment to the temporary partial disability rate. The temporary partial disability rate is payable for a maximum of 350 weeks from the date of injury. This 52 week limitation can be extended to 78 weeks where the employee has had an interim return to work and therefore did not draw consecutive weeks of temporary total disability while in a “return to work with limitations” status. The employer must give notice to the employee within 60 days of the employee’s release to return to work with restrictions stating the employee has been released and explaining the limitations and restrictions.

3. Employees who have suffered injuries that are “catastrophic” are not subject to the 400 week limitation on temporary total disability benefits or the 52/78 week limitation on payments while in a “return to work with limitations” status. They are entitled to receive temporary total disability for as long as they are disabled and unable to return to any work.

29. Q. I hurt my back in a job related accident in July 5, 2018. I returned to work on July 15, 2019. My back condition then worsened. On July 30, 2019, I had to stop work because of it. Should I now receive the $575.00 per week disability benefit in effect at the time I was injured on July 5, 2018 or the current rate of $675.00/week which started on July 1, 2019?

A. The weekly disability rate that was in effect at the time of your original injury is the one that applies to you. Even if the maximum rate has been raised since your original injury, the increased rate applies only to those injuries that occur after a new rate goes into effect. Nor are there any cost of living increases in weekly income benefits under Georgia’s workers’ compensation system.
The maximum rate for injuries occurring on and before July 1, 2019, are as follows:

July 1, 2001 – June 30, 2003......................$400.00
July 1, 2003 – June 30, 2005......................$425.00
July 1, 2005 – June 30, 2007......................$450.00
July 1, 2007 – June 30, 2013......................$500.00
July 1, 2013 – June 30, 2015......................$525.00
July 1, 2015 – June 30, 2016......................$550.00
July 1, 2016 – June 30, 2019......................$575.00
July 1, 2019 – To the Present......................$675.00

There are exceptions to the general rule. If the cause of your present disability is a simple worsening of your condition, you are probably still under your prior original rate. If your renewed disability is a result of a “new accident” you may be entitled to the higher rate. It requires careful analysis of the facts and a knowledge of the compensation law to make the proper determination of which rate should apply in this type situation. Seek experienced legal counsel for advice in this area.

30. Q. Will a loss of hearing caused by my job entitle me to workers’ compensation benefits?

A. Yes. Loss of hearing in one or both ears caused by a job related accident entitles you to benefits. Benefits are also payable to those employees who can show that exposure to harmful noise levels in their work caused their loss of hearing. However, there are special rules that apply to hearing loss claims.

31. Q. My wife was attacked while working as a clerk in a store. Her physical injuries have healed, but her nerves are bad and the psychiatrist is still treating her. Is she entitled to benefits for the disability caused by her mental condition?

A. Yes. A worker is entitled to benefits for a mental disability brought on by a physical injury that is job related. However, purely psychological injuries that never involved any underlying physical job injury are generally not covered.

32. Q. Can I select my own doctor?

A. Probably not. In most situations your employer or workers’ compensation insurance carrier is entitled to select who will provide medical care to you for injuries. The employer can satisfy their duty to provide medical care in several different ways, including:

(1.) Posting a panel of six medical suppliers on the bulletin board or other place where the employees will be able to see it. The injured employee may then select a doctor or medical supplier from the panel to provide treatment.

(2.) Posting a “Conformed Panel of Physicians” from which the employee may select a doctor or medical supplier to provide treatment.

(3.) Posting a “Managed Care Organization” which will provide medical care to the injured employees.

The employer is required to take responsible measures to help its employees learn about the posted medical care providers and assist them in obtaining care from an authorized medical care provider. However, many do not and you must attempt to educate yourself about your rights.

33. Q. I have tried the doctor supplied by the company and he or she is not helping me. The company refuses to let me go to a doctor I know could help me. What can I do?
A. You must use the physicians authorized by the employer. You are allowed to make one-time change from one physician to another on a posted panel without the employer’s authorization. There are other exceptions where the employee can choose the treating doctor without consent of the employer. Some of these include where the employer has failed to post a panel of approved medical suppliers; or where the approved doctor chosen by the employer stops medical care before the employee is cured; or, in a medical emergency, where the authorized company doctor is not available.

If you want to use a physician not authorized by the employer and your employer will not agree to it, you must request the State Board of Workers’ Compensation to authorize this and show good cause for the change. If you use a doctor without authorization from the employer or the State Board of Workers’ Compensation, the employer may not be required to pay for the doctor’s bills or medicines prescribed by the doctor and you may end up having to pay the doctor’s bills out of your own pocket.

34. Q. The company doctor says I need an operation. I am afraid to undergo surgery. Can I refuse to have the operation?

A. Probably. The law requires that you accept medical care necessary to help you recover from your disability. Your employer can have your wage loss benefits stopped if your refusal to accept the treatment is unreasonable. A hearing before the State Board of Workers’ Compensation may be necessary to determine if the requested operation is reasonable and necessary in your case. The Board rarely requires surgery to be accepted by a claimant, if the claimant does not want it.

35. Q. My employer does not have a list of physicians posted. Can I go to my own doctor?

A. Yes. If the employer fails to post a list of available medical suppliers or refuses to authorize the employee to use a listed provider, the employee may select his own physician to provide the necessary treatment at the employer’s expense. However, you should ask your employer for their posted panel of doctors before assuming they do not have one. Otherwise, it can be difficult to justify why you chose a non-panel doctor.

36. Q. Can I use the services of a chiropractor?

A. Although chiropractors often get results where other forms of treatment have failed, many employers and their insurance carriers will not authorize or pay for their services. Check the panel of doctors your employer has posted. Sometimes there is a chiropractor on the list. Don’t be afraid to ask.

37. Q. My employer did not have a list of physicians posted and did not provide one when I asked, so I went to see a chiropractor for my job related injury. I have been seeing the chiropractor for a week and need more treatment, but the company now says they won’t pay for the chiropractor and I must go to a doctor they have selected. Can they do this?

A. No. Once the doctor has been authorized or you have chosen your own doctor in absence of the employer posting or providing a list, your doctor becomes the “authorized” physician and the employer cannot force you to use another treating physician unless they make a formal request to the State Board of Workers’ Compensation and the Board directs you to change. Your employer, however, can still require you to appear before its own doctor for examination only and you must comply.

38. Q. The company doctor says I have a 10% permanent partial disability as a result of a job related injury. I think it is much greater than that. How do I show that the company doctor is wrong and I am right about the extent of my partial disability?

A. As a practical matter, if it is only your opinion against that of a qualified doctor, you have little chance of winning. You should have yourself examined by a doctor of your own choice and get his opinion on the proper rating. You can then request a hearing. The Administrative Law Judge at the Board will hear your testimony and then examine both doctors’ evaluations before making a decision. In some
situations, you are entitled to go to a doctor of your own choice for a one time independent medical examination at the employer’s expense. This is called a “statutory independent medical examination” but it is only allowed within 120 days of your last receiving an income benefit payment and within 50 miles of you home.

39. Q. Is there any limitation on how long I can collect medical benefits for a job related injury?

A. Yes. For injuries after July 1, 2013, your entitlement to medical benefits will only continue for 400 weeks, unless the Board has designated your injury as “catastrophic”. For injuries before July 1, 2013, your entitlement to medical runs as long as you continue to need medical care for the injury and/or as long as your physician says it is necessary. In “medical care only” situations where the employee receives medical care, but does not receive weekly benefits for lost wages because the injury did not prevent your working, there can be a cut off of entitlement to medical care one year after the last medical care from the treating doctor. It is best not to wait more than 2-3 months between follow ups with your doctor for your job injury.

NOTICE, HEARINGS AND PROCEDURES

40. Q. Where is the State Board of Workers’ Compensation located?

A. The State Board of Workers’ Compensation has its main office at 270 Peachtree Street, Atlanta, Georgia 30303-1299. For a listing of branch offices around Georgia either call the Board’s general number at (404) 656-3818 or go to their website at www.sbwc.georgia.gov

41. Q. How should I notify my employer if I have had a job related accident, injury, or disease and how much time do I have to give the necessary notice?

A. You must give your employer prompt notice of any injury, disease, or condition which you believe to have been caused or brought about by your employment. This notice must be given to your foreman or other supervisor at your employment within 30 days from the date of injury unless you have a valid excuse for failing to give the notice within the required time. Failure to give notice within 30 days can cause a loss of benefits. However, as a practical matter, you should give notice of your job injury as soon as you are aware that it is related to your job and not wait until the 29th day. The longer you wait, the more likely your claim will be denied.

42. Q. When I give notice to my employer, is there any particular information I should include?

A. Yes. The notice given to the employer must clearly state that you experienced an injury or disease and that it came about as a result of the employment. You should also list witnesses, if any.

43. Q. I was hurt on my job and told my employer, but I never received the benefits to which I am entitled. How much time do I have to file a claim?

A. You must file your claim with the State Board of Workers’ Compensation within one year from the date of the accident.

If the employer has provided medical treatment but has not given you the other benefits to which you are entitled, you have one year from the date of the last medical treatment to file a claim for any other benefits due to you. In the case where the employer or their workers’ compensation insurance carrier has paid some weekly wage loss benefits to you, you have two years from the date the last weekly benefit was paid to file for any additional wage loss that may occur due to your compensable injury.

Failure to file within the time allowed almost always results in a denial of the employee’s claim, but there are exceptions. One of the exceptions is where the employer purposely misleads the employee causing the employee not to file the claim.
44. **Q.** How long do I have to make my claim for an industrial disease?

**A.** The general rule is that you have one year from the date of disability or death caused by industrial diseases. There are some exceptions to this rule. The rules are complex in this area and advice from an attorney experienced in workers’ compensation law is essential to protect your rights.

45. **Q.** My employer had offered me a “light duty” job. I don’t think I can do it. Do I have to take this job?

**A.** If your doctor has indicated that you can do light duty work, you will have to make a “good faith effort” to do the light duty job for at least one full 8 hour day. If you refuse to try it, or you leave by your own choice before completing a full 8 hour day, your employer can cut off your weekly benefits. If you attempt the job for at least one full 8 hour day but are unable to perform it for more than 15 work days, your employer must reinstate your weekly benefits. Also, if your employer chooses to send you home before the completion of your 8 hour day, benefits should be reinstated.

46. **Q.** I was hurt on the job and the doctor says I’ll be out for several weeks. When should I expect my first workers’ compensation disability check?

**A.** There is a one week waiting period. The injured worker is not entitled to workers’ compensation benefits for the first week, but if you are disabled from work for three or more weeks, the employer is required to go back and pay for the first week also.

Your first check is due no later than the end of the third week of your disability. The employer or the workers’ compensation insurance company should start your payments by this time. If the payments have not been made to you within 21 days of the date the employer has notice of your injury and the start of your disability, then the employer or his insurance carrier is subject to an automatic penalty of 15% of the unpaid benefits. The 15% penalty is paid to the injured worker.

If you have not received your check by the 21st day your disability started, don’t immediately run out and hire a lawyer. Call either your employer’s workers’ compensation administrator or their workers’ compensation insurance company. See if you can find out what happened to your check. It may be on its way. If your check has not been sent by the 21st day, or if you are told benefits are being denied, then its time to look for help. Your shop steward or business agent can direct you to a lawyer who knows how to handle this type problem.

47. **Q.** How will I know when my weekly disability benefits will start, stop or be denied?

**A.** Your employer must advise you of its intention to start or stop payment of workers’ compensation benefits. This can be done on a State Board of Workers’ Compensation Form WC-1, WC-2, or WC-3.

If your employer decides to deny workers’ compensation benefits to you, he must advise you of this within 21 days of his learning of the injury (or death).

If your employer denies your entitlement to workers’ compensation benefits, it is then up to you to file a claim for a hearing with the State Board of Workers’ Compensation office in your area. The Board will then send you a notice giving the time, place and date of the hearing that will be held to make a determination of your entitlement to workers’ compensation benefits. Although you can request a hearing on your own, the assistance of an experienced workers’ compensation attorney should be considered.

48. **Q.** If a hearing is necessary to establish my rights to workers’ compensation benefits, am I entitled to a jury trial?

**A.** No. The State Board of Workers’ Compensation is a state agency. It handles the processing of claims and schedules hearings on disputed claims. The initial hearing is held before a single administrative law judge whose job it is to make decisions on disputed claims. Hearings on disputed claims are held in a court room and a court reporter makes a record of everything
that is said and keeps copies of all documents that are admitted in evidence.

49. Q. Can I represent myself at my hearing?

A. Yes. You are not required to have an attorney. You can represent yourself. See also answer to question No. 57.

50. Q. Where will the hearing on my workers’ compensation claim be held?

A. The location for the hearing is determined in the following order of preference:

For accidents which occur in Georgia:

(1.) The county where the accident occurred.
(2.) Any county which shares a common boundary with the county where your accident occurred.
(3.) Any county that the parties can agree upon and which is acceptable to the State Board of Workers’ Compensation.

For accidents which occur outside of Georgia:

(1.) The county where the employer resides.
(2.) The county where the employer has his place of business.
(3.) Any county designated by the State Board of Workers’ Compensation.

51. Q. Will I get a notice of when and where the Board schedules my hearing?

A. Yes. After you have filed your claim and request for hearing, the Board sends a notice to you stating the time, date and place of hearing. The notice is sent well in advance of the time the hearing is set. **You should give the Board a correct mailing address, email and phone number and notify the Board of any change in address to be sure that you receive these notices.** Your failure to be present at the time of the hearing will likely result in the dismissal of your claim.

52. Q. How soon after a hearing will I be advised of the administrative law judge’s decision?

A. The decision of the administrative law judge is made in writing and is called an “Award.” The Award is usually mailed out within 60 days from the date all the evidence is submitted, but this varies and in some circumstances it can take much longer.

53. Q. If I am not pleased with the decision of the administrative law judge, can I appeal?

A. Yes. You have 20 days from the date of the administrative law judge’s Award to file an Appeal to the Appellate Division (three judge panel) of the State Board of Workers’ Compensation. There are other appeals that can be made beyond this point where there are disputed legal questions. Your lawyer can explain this to you.

54. Q. My employer fired me. Although I was working, I was doing light work because of an on-the-job injury. Now I can’t find a new job because potential employers don’t want to hire someone who has had a bad injury in the past. Can I reopen my compensation claim and get benefits until I find another job?

A. Yes. You experienced an “economic” change in condition when your employer fired you. If you cannot find work you can perform because of your impaired physical condition, you can reopen your compensation claim. If you can find work, but are earning less than you were making before you were fired, you may be able to get partial disability payments. It is important to keep detailed records of each employer contacted in your job search and the results of each contact. Failure to prove a diligent job search can result in the Board’s refusal to reinstate weekly benefits.
55. Q. Last year I fell on the job and hurt my back. I went back to work three months ago, but my back has started hurting again. What should I do if I get to where I can’t work at my job any longer?

A. Your claim remains open for two years from the last date you received weekly wage loss benefits or one year from the last payment of medical expenses on your behalf, whichever period of time is longer. If you become disabled again during this period, you can ask that your claim be reopened on the basis of a change in your condition for the worse. Entitlement to medical care stays open so long as you can show the need for medical care relates to the original injury. (See also the answer to Question 39.)

56. Q. A representative of my employer has contacted me and asked me if I want to settle my claim. What should I do?

A. The injured employee, or the employee’s dependents in a death case, may be contacted by the employer or the employer’s workers’ compensation insurance carrier and asked if they want to settle the claim or accept a lump sum payment for such future benefits as may become payable. The employee and employer are permitted to settle cases, but any settlement reached must be approved by the State Board of Workers’ Compensation.

Any time a settlement is proposed, the question arises whether or not it is a fair settlement and whether or not the employee would be wise to accept it. This requires a careful analysis of all the facts and the law applicable to the claim being settled. Injured workers do not generally have this type knowledge and experience. The only way the employee can be confident that he is making the right decision with respect to a settlement proposal is to consult with qualified legal counsel who is experienced in workers’ compensation law.

ATTORNEYS

57. Q. Is it advisable to have a lawyer to represent me in the hearing of my claim?

A. Yes. You can be sure that your employer or his workers’ compensation insurance company will have their lawyer at the hearing to represent them. The administrative law judge will try to discover the facts necessary to make a fair decision, but often the issues are complicated and the employee without a lawyer does not have the knowledge to properly prepare the case. Proper preparation of the case requires knowledge of the law and the ability to bring the proper evidence before the administrative law judge to prove the claim. It cannot be stated too strongly that an employee facing a hearing should be represented by an attorney experienced in workers’ compensation law.

58. Q. What do attorneys charge to represent claimants in workers’ compensation cases?

A. It depends on what you want and need. If you just want to discuss your claim and get advice and counseling, a lawyer may charge you a one-time fee of up to $100.00 without getting approval from the State Board of Workers’ Compensation. The lawyer is prohibited from charging more than $100.00 until he gets approval from the Board. However, many attorneys do not charge this. Just ask.

If you want the attorney to prepare your claim and represent you at the hearing before the State Board of Workers’ Compensation, the usual arrangement is on a contingent fee basis. A contingent fee is an arrangement whereby the lawyer agrees to accept your case for a percentage of the amount he collects for you. If he loses the case, he does not receive a fee. If he wins the case, he receives a percentage of the benefits awarded to you. The attorney who takes the case on this basis will ask you to sign a contract setting out the fee arrangement. He must file this contract with the State Board of Workers’ Compensation. If there is a hearing and your lawyer wins the case for you, the Board will usually award attorney fees of 25% of your past and ongoing weekly wage loss benefits as the fee.

59. Q. How can I find an attorney qualified to handle my workers’ compensation claim?
A. The attorney you select should be experienced in handling workers’ compensation cases. If you have used a lawyer in the past in which you have confidence, ask if he or she is experienced in workers’ compensation law. You may wish to hire him or her or ask to be referred to an attorney your lawyer knows has experience in workers’ compensation law. If you do not have a lawyer to call, you may ask fellow employees, your shop steward or business agent if they know of a lawyer experienced in workers’ compensation law. You may also use the referral services of the local Bar Association in your area. Or call the attorneys who drafted this book at the number on the inside cover.

OTHER FORMS OF COMPENSATION

60. Q. Can I get unemployment compensation in addition to my weekly workers’ compensation during my period of disability?

A. No. You are not entitled to unemployment compensation for any week in which you are paid workers’ compensation benefits for temporary total disability or temporary partial disability. But you might be able to collect on a private disability policy you purchased for yourself completely separate from your employer.

61. Q. I am 58 years old. I was hurt on the job and I am disabled. I am receiving weekly workers’ compensation benefits. My employer wants me to apply for my retirement on the company pension plan. Can I take my pension and also collect workers’ compensation benefits?

A. Probably. Your right to the pension will usually not affect your right to receive workers’ compensation, but your employer may be able to reduce the amount of the workers’ compensation benefits payable to you if the employer paid for all or part of the cost of the pension or disability plan which pays benefits to you. This is a complex law and may require a lawyer experienced in workers’ compensation law to answer specific questions.

62. Q. My employer has a health and accident insurance plan for the employees. I am told that the benefits under this plan are greater than the benefits provided by workers’ compensation. Which should I apply for if I have a job related injury or disease?

A. This is a question which is asked frequently. Most of the health insurance plans provided by the employers exclude coverage for injuries which are compensable under the Workers’ Compensation Act. Nonetheless, careless or inexperienced employers or insurers sometimes fail to give the employee the proper advice in this regard. Be sure that you make it clear to your employer when you give notice and request your benefits that your injury or disease is job related. While some health and accident plans seem to pay more at first, their benefits usually run out long before your workers’ compensation benefits. Filing for the wrong benefits in the beginning can create problems at a later date.

63. Q. I have my own health and accident insurance for which I pay the premium out of my pocket. Can I collect this and also collect my workers’ compensation benefits for a job related injury or disease?

A. Sometimes. Each health and accident policy is different. You should ask your insurance agent or attorney.

64. Q. I was hurt while using a motor vehicle belonging to my employer. Can I collect my loss of earnings under my employer’s no fault vehicle insurance in addition to my workers’ compensation benefits?

A. No. The Georgia law was changed. No fault for accidents which occur in Georgia ended on October 1, 1991.

65. Q. My doctor says I am totally disabled and this disability may continue for more than a year from the date I was injured in a job related accident. Should I apply for Social Security
disability benefits (SSDI)?

A. Probably. If your disability is total and is likely to last twelve or more months, you should apply for Social Security benefits. You are allowed to receive both workers’ compensation and Social Security benefits, but both of these benefits added together may not be more than 80% of the average monthly wage you were earning before the disability began. If the two benefits together exceed 80% of your average monthly wage, your Social Security benefits will be reduced to the level where the total benefit does not exceed this limit.

66. Q. My job related injury was the fault of someone who was not working for my employer. Can I collect workers’ compensation benefits and also make a claim against the person responsible for my injuries?

A. Yes. If you are injured due to a defective machine or product or because of the carelessness of someone not working for your employer, such as in an automobile accident, you can make a claim against the responsible party and still collect your workers’ compensation benefits. But you may have to reimburse your employer from your recovery in the law suit for the workers’ compensation benefits paid to you.

67. Q. Can I go to court and sue my employer if it was his fault I was injured?

A. No. The workers’ compensation law does not consider fault. The employer is required to provide workers’ compensation benefits to the injured employee without considering whose fault it was that the injury occurred. The employee, in return, is limited to his benefits under workers’ compensation and may not file a separate law suit against his own employer even when it was the employer’s fault that the employee suffered an injury in his employment.

68. Q. If I am disabled and cannot do my regular job, is my employer required to provide me with a “lifetime” job I can do?

A. No. If you are injured in your employment and your employer determines that you are unable to return and perform the regular duties of your employment, the employer does not have to accept you back as an employee. He will be required to pay you workers’ compensation benefits until you can find new work suitable to your impaired condition at the same or greater salary, but he does not have to accept you back. If you are a union member, you may have re-employment rights under your union contract which would require the employer to take you back. Consult with your shop steward or business agent about your contract rights to re-employment.

You may also have the rights created by the Americans With Disabilities Act and Family and Medical Leave Act. The ADA gives some employees with disabilities or limitations the right to force their employers to make reasonable accommodations or modification in their jobs so they can return to work. FMLA may protect your job position and allow you to come back after your injury. These are complex areas of law that should be discussed with an attorney to see if it applies to you.

69. Q. I am collecting workers’ compensation now. I have been sued by my creditors because of some old debts. Can my creditors garnishee my weekly workers’ compensation benefits?

A. No, not for ordinary debts, but you can be subject to garnishment for child support obligations.

70. Q. If I am injured on the job, do I have to submit to a drug test if the employer asks for one?

A. Yes, if you refuse to take a drug test or if you fail a drug test, your employer can refuse to provide workers’ compensation benefits to you. You will also likely be tested periodically by your doctor to insure you are not mixing illegal and prescription medications. But, this is a problem that may be overcome! It is very important for you to seek help from an experienced workers’ compensation attorney if your benefits are denied because of a drug test.
GEORGIA WORKERS’ COMPENSATION LAW
For Injuries Sustained on and after July 1, 2019
(*See Question 29 for rates payable for injuries occurring before July 1, 2019)

SCHEDULE OF BENEFITS

TOTAL DISABILITY
Waiting period of 7 calendar days (recoverable only after 21 days of disability). none
Maximum weekly benefit (after waiting period)..............................$675.00
Percentage of average wage..............................................66-2/3%

Temporary Partial Disability
Maximum weekly benefit..............................$450.00
Maximum Period (from date of injury)..............350 weeks
Percent of difference in wages before and after injury (loss of earnings) ............................................66-2/3%

PERMANENT PARTIAL DISABILITY
Maximum weekly benefit..............................$675.00
Percent of average wage..............................66-2/3%

Maximum number of weeks benefits allowed for loss of a specific member for calculation of a percentage loss of use:
Arm.............................................................225 weeks
Leg.............................................................225 weeks
Hand.............................................................160 weeks
Foot.............................................................135 weeks
Thumb............................................................60 weeks
First (index) finger..........................................40 weeks
Second (middle) finger......................................35 weeks
Third (ring) finger............................................30 weeks
Little finger.....................................................25 weeks
Great Toe......................................................30 weeks
Any toes other than the great toe......................20 weeks
Eye...............................................................150 weeks
Loss of hearing (one ear).................................75 weeks
Loss of hearing (both ears).............................150 weeks
Disability to the Body as a whole....................300 weeks
Disfigurement................................................none

DEATH BENEFITS
Maximum weekly benefit..............................$675.00
Maximum period (surviving spouse only)...........400 weeks
Total (surviving spouse only)........................$270,000.00
Other dependents...........................................full period of dependency
Burial allowance..............................................$7,500.00

PARTIAL DEPENDENT
Weekly benefit equals weekly contribution divided by average wage multiplied by weekly benefits for a total dependent. Maximum period is 400 weeks.
MEDICAL BENEFITS
For injuries before July 1, 2013 – Unlimited (See Question 39)
For injuries after July 1, 2013 – 400 weeks (See Question 39)

NOTES: