

Injured Workers' Bill Of Rights In Alabama

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The original Bill of Rights was created to protect people and inform citizens of their rights. The Injured Workers' Bill of Rights was created by George Allen Moore, attorney, who is dedicated to protecting injured workers from unfair treatment by employers and insurance companies. Being well informed is the most effective way to protect yourself and your family members. If you are injured during the course of your work, you have the following rights:

1. You have the right to be treated by a doctor at the expense of the employer. The employer is liable to the employee for "reasonable" and "necessary" medical treatment resulting from a job-related injury. This liability for medical treatment is limited only by the requirement that it be necessary and reasonable. The employer is also liable for the cost of medical supplies, such as crutches, hearing aids or prescriptions, and other expenses incident to reasonable and necessary medical care. This includes mileage to and from medical and rehabilitation providers at the rate paid by the State for official travel.

2. You have the right to select a new doctor if you are dissatisfied, for any reason, with the first doctor. If you become dissatisfied, for any reason, with the initial treating physician selected by the employer and if further treatment is required, you may tell the employer, and you are entitled to select a new physician from a panel or list of four physicians provided by the employer. The four physicians or surgeons must not be from or members of the same firm, partnership, or professional corporation. The employer is liable to pay for the reasonable and necessary medical care from the new doctor that you chose.

3. You have the right to lifetime medical care. The surgical treatment, physical rehabilitation, medicine, medical and surgical supplies, crutches, artificial members, and other apparatus which are reasonable and necessary as the result of an accident arising out of and in the course of the employment are lifetime benefits and continue from the time of the injury until your death.

4. You have the right to compensation benefits. You are entitled to weekly compensation if you are unable to work and earn wages. The physician treating you under the Alabama Workers' Compensation Act must certify to your employer that you are unable to work because of the on-the-job injury. This is called Temporary Total Disability benefits. If you can work only part time or do other duties that pay less, you are entitled to Temporary Partial benefits.

5. You have the right to "Temporary Total Disability." This is paid during the healing period while you are unable to work. This is based on your average weekly earnings. The amount of compensation available is two-thirds of your average weekly earnings at the time of the injury, subject to maximum and minimum amounts set by the Act. This compensation is payable until you recover completely, return to work or reach "maximum medical improvement," which is the full extent that you can recover given the injury you suffered.

Example: John works in a warehouse and makes \$600.00 per week. He hurts his back on the job, and his doctor says he cannot work at all while he recovers. John is entitled to \$400.00 per week in temporary total benefits, or two-thirds of his salary at the time he got hurt, until the doctor releases him to go back to work.

6. You have the right to "Permanent Partial Disability." This is paid when an injury causes a permanent injury to part of your body. To determine the amount of benefits payable, the degree to which the injury decreases your ability to earn wages must be established. This degree of disability is called a "percentage" of disability. The amount of compensation available is that percentage times two-thirds of the employee's

average earnings before injury for up to 300 weeks, subject to maximum and minimum amounts set by the Act.

The percentage of permanent disability is based on permanent limitations caused by your injury. If you return to work making the same wage as when you were injured, your permanent disability benefits will be based on your degree of physical impairment. If you cannot return to work making the same wages, you are entitled to permanent disability benefits based on your loss of ability to earn income, or "vocational disability." If within 300 weeks from the date of injury you are unable to continue performing the job, you may then pursue benefits based on vocational disability, which is usually higher than "physical impairment."

Example: Once Jane recovers from her back injury, she returns to her job in the warehouse and to her \$600.00 per week salary. She still has some continued pain and a slight loss of motion at her waist, however, Jane's doctor places some restrictions on the amount of lifting, bending and stooping she can do. She has a 10% permanent physical impairment. Jane is entitled to draw \$40.00 a week in permanent partial disability benefits: 10% of two-thirds of her wage (\$400.00) at the time she got hurt.

Example: After six months and two surgeries, John recovers to the extent possible, but has lost motion in his back and has two fused disks in his back. The doctor releases John from his care, but restricts John from any bending or stooping at all, sitting or standing for more than 30 minutes at a time, and from all lifting more than five pounds. John cannot ever return to work in the warehouse, but he does find another job that pays him less than \$600.00 per week. Based on the doctor's testimony about John's restrictions, and vocational testimony about John's ability to find and hold a job, John has a 50% permanent disability. John is entitled to \$200.00 a week in permanent partial disability benefits, which is 50% times two-thirds of \$600, the wages he was earning when injured.

7. You have the right to "Permanent Total Disability." This is paid when you can no longer perform your former job and are unable to perform reasonably gainful employment. Reasonably

gainful employment is work that is suited to your skills, education and age, and is comparable to your previous work in the areas of compensation and job duties. Permanent Total disability does not require that you be completely helpless.

The amount of compensation available is two-thirds of the average weekly earnings received before injury, subject to maximum and minimum amounts set by the Act. The benefits are payable for life, or until the disability ends.

Example: Rita, who also works in the warehouse and makes \$400.00 per week, is run over by a forklift and seriously injured. After a year of surgery and treatment, she recovers somewhat, but has stringent permanent restrictions on her physical abilities. In addition to restrictions on bending, lifting and the like, she can no longer drive, has blurry vision, and can only walk with a cane. Her injuries have caused her to be depressed, as well. In her doctor's opinion, Rita cannot return to any gainful employment. Rita is entitled to \$266.67 a week (two-thirds of her wage at the time of her accident) in permanent total disability benefits for the rest of her life or until she recovers enough to be able to work again.

8. You have the right to compensation for scheduled injuries. Injuries to certain parts of your body are called "scheduled injuries." To calculate the amount of benefits available, the extent of the loss of use of the injured part of your body must first be determined. The amount of compensation is two-thirds of your average weekly earnings before injury, for the number of weeks established by the Act, subject to the minimum and maximum levels of compensation. If loss of use of the injured part is less than total, the benefits are reduced proportional to the partial loss of use.

The number of weeks for which benefits are payable is set forth as follows:

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| 1. Loss of Thumb | 62 weeks |
| 2. Loss of First Finger | 43 weeks |

3. Loss of Second Finger	31 weeks
4. Loss of Third Finger	22 weeks
5. Loss of Fourth Finger	16 weeks
6. Loss of Hand	170 weeks
7. Loss of Great Toe	32 weeks
8. Loss of Toe (other than Great Toe)	11 weeks
9. Loss of Foot	139 weeks
10. Loss of Arm	222 weeks
11. Loss of Leg	200 weeks
12. Loss of Eye	124 weeks
13. Total Loss of Hearing in Both Ears	163 weeks
14. Total Loss of Hearing in One Ear	53 weeks
15. Loss of Eye and Leg	350 weeks
16. Loss of Eye and Arm	350 weeks
17. Loss of Eye and Hand	325 weeks
18. Loss of Eye and Foot	300 weeks
19. Loss of two Arms (not at Shoulder)	400 weeks
20. Loss of two Hands	400 weeks

21. Loss of two Legs	400 weeks
22. Loss of two Feet	400 weeks
23. Loss of one Arm and other Hand	400 weeks
24. Loss of one Hand and one Foot	400 weeks
25. Loss of one Leg and other Foot	400 weeks
26. Loss of one Hand and one Leg	400 weeks
27. Loss of one Arm and one Foot	400 weeks
28. Loss of one Arm and one Leg	400 weeks
29. Serious Disfigurement	100 weeks

9. You have the right to death benefits. If you die as a result of an accident or injury on the job, your dependents are entitled to recover death benefits. The amount available is based on the number of dependents and the amount you contributed to support these dependents. Dependents also receive funeral benefits of \$3,000. Death benefits end in the event of death or marriage of the dependent.

10. You have the right to compensation from occupational diseases. Diseases contracted as a result of employment conditions are compensable injuries, though they are not the result of what is commonly considered an "accident." You must show that the disease (1) arose out of and in the course of employment; (2) was due to some danger or risk beyond those to which employees in general are exposed; and (3) was related to your occupation. The nature of the employment must cause or aggravate the disease. Benefits are calculated on the same basis as any other non-scheduled injury, except that hearing loss is

treated as a scheduled injury. Common occupational diseases include diseases of the lung such as black lung, brown lung, silicosis and asbestosis.

11. You have the right to have vocational rehabilitation. If the employer elects, you must undergo vocational rehabilitation at the employer's expense through a vocational rehabilitation specialist. If you request vocational rehabilitation and are unable, in the opinion of the treating physician, to return to your former employment, and if both a vocational rehabilitation specialist and the treating physician, who is paid by the employer, give an opinion in writing that vocational rehabilitation is necessary to restore you to gainful employment and is in your best interest, the cost of your rehabilitation shall be paid by the employer. The cost, where rehabilitation requires residence away from your customary residence, includes reasonable charges for your necessary board, lodging, and travel.

12. You have the right to petition the court for reconsideration of your rating. An injured employee almost always benefits by trying to return to work. When an injured worker attempts to return to work, and he or she is unable to do so on a permanent basis, it is an unsuccessful attempt to return to work. A failed attempt to return to work shows a good faith effort by the injured worker and will usually have a positive effect on a workers' compensation claim.

If you return to work at a greater or equal wage than your pre-injury wage, your benefits are not based on vocational disability, but on the physical impairment. These benefits are paid as permanent partial disability benefits.

The Act provides that if you receive an award based on a physical impairment and you involuntarily lose your job within 300 weeks from the date of the injury, you may petition the Court for a permanent partial disability rating based on your loss of earning capacity or vocational disability. This provision does not apply if you resign without good cause, if a labor dispute is the cause of your employment loss, if you engage in misconduct, or if you lose a license or certification required to perform the job.

Many employees are unaware of the right to reopen their claims later and settle their case for an amount based on the physical impairment. Employers sometimes draft settlement language that waives the employee's right to reopen the case later for assignment of a vocational impairment rating. Employees must beware of such tactics and protect their right to reopen the case.

13. You have the right not to be terminated by your employer solely because you make a claim for workers' compensation benefits. You cannot be terminated solely because you make a claim against your employer to recover workers' compensation benefits.

14. You have the right to timely payment of compensation. Compensation shall begin with the fourth day after disability. If any installment of compensation payable is not paid without good cause within 30 days after it becomes due, there shall be added to the unpaid installment an amount equal to 15 percent.

15. You have the right to timely payment of medical bills. All undisputed medical reimbursements or payments shall be made within 25 working days of receipt of claims in the form specified in the Act. There shall be added to any undisputed medical invoice which is not paid within 25 working days an amount equal to 10 percent of the unpaid balance.

16. You have the right to attorney fees of 15%. The Alabama Workers' Compensation Act sets the amount of fees that attorneys can charge in Workers' Compensation cases. This amount is 15% of disability benefits recovered, and payment is contingent upon obtaining a recovery for you. Any costs or expenses incurred in the lawsuit are also your responsibility, whether the suit is won or lost, and are not included in the 15% limitation.

17. You have the right to ask for help from an ombudsman. In 1992, the Alabama Legislature created the Ombudsman Program, under the direction of the Alabama Department of Industrial Relations. The program exists to provide information about Workers' Compensation in Alabama to any person. A toll-free number is provided for employees,

employers, doctors and others to call for assistance. The number is (800) 528-5166.

The Ombudsman is also authorized to mediate disputes over claims for benefits. The mediation is entirely voluntary, is informal, and is not binding on either party. No record of testimony is kept. The Ombudsman may, however, assist the parties in reaching some agreement or resolution of disputes, which can then be finalized under the procedures provided by the Act for settling workers' compensation cases.

18. You have the right to make a third party claim. Under the Alabama Workers' Compensation Act, your employer is generally immune from lawsuit. The obligation of the employer for work-related injuries is for workers' compensation benefits. However, you can bring a legal action against a third party who has caused your injuries. When possible, always consider a third-party action. Third-party actions permit recovery of general damages, which far exceed workers' compensation benefits. Examples include:

- A delivery person slips and falls on the premises of a customer. A premises liability lawsuit could be brought against the customer.
- A worker is injured while using a defective product. A product liability lawsuit can be brought against the manufacturer and/or seller of the product.
- A construction worker is injured due to the negligence of a subcontractor or general contractor at a construction site. A third-party action can be brought against the negligent contractor.
- A driver is injured in a motor vehicle accident during the course of employment. A third-party action can be brought against the driver who caused the accident.

19. You have the right to make a social security disability claim when receiving workers' compensation benefits. If your disability prevents you from engaging in gainful employment and the disability is expected to continue for one

year or longer, you can make a claim for social security disability benefits while still receiving workers' compensation benefits.