



**Rights of Workers Dealing with Serious**  
**Health Conditions,**  
**Illnesses or Disabilities in the State of**  
**New York**

COMMITTEE ON LABOR & EMPLOYMENT LAW

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## **Rights of Workers Dealing with Serious Health Conditions, Illnesses or Disabilities in the State of New York**

### **1. Work-Related Injuries**

#### **If your injury or illness is work-related**

You may be eligible for Workers' Compensation. Workers compensation is insurance that provides cash benefits and/or medical care for workers who are injured or become ill as a direct result of their job. To be eligible for Workers' Compensation, you must have suffered an on-the-job injury or you must be dealing with an occupational disease.

An occupational disease or condition is one that is produced as a natural incident of a particular occupation; it arises from the conditions to which a specific type of worker is exposed. For example, asbestosis is an occupational disease for those employed in the removal of asbestos.

Cash benefits for the purpose of Workers' Compensation depend on the extent of the disability suffered. Your healthcare provider will determine whether you are dealing with temporary total disability, temporary partial disability, permanent total disability, or permanent partial disability

#### **Pay attention to deadlines**

The time limit for filing a claim for benefits is the latter of two dates:

- 2 years from the date of the disabled worker's disability; or
- 2 years from the time the disabled worker knew or should have known that the disease was due to the nature of the employment.

You must notify your supervisor about an **on-the-job injury** and the way in which it occurred as soon as possible and within 30 days after the date of the accident causing the injury.

While not filing within the required deadlines may jeopardize your ability to claim benefits, you may still be eligible if you can show that it was not reasonably possible to file a claim or notify someone earlier.

#### **Where to get treatment**

Except in emergency cases, the treating health care provider must be authorized by the Workers' Compensation Board, if you are to receive Workers' Compensation for an on-the-job injury or occupational disease. Your employer or insurance carrier may also require you to obtain tests or medicine from a diagnostic network or designated pharmacies they have contracted with.

#### **Responsibility for medical expenses**

If you suffered an **on-the-job injury or occupational disease**, the cost of necessary medical services will be paid by your employer or your employer's insurance carrier, if the case is not disputed.

**When you return to work**

Under NY Workers' Compensation Law, if you can return to work but your injury prevents you from earning the same wages you once did, you may be entitled to a benefit that will make up two-thirds of the difference. You may also return to work in light or alternate duty before you are fully healed.

**If you are currently unemployed**

If you are still within the 2 year timeframe (see deadlines above), and your injury arose from a prior employment, you may be able to claim Workers' Compensation.

**2. Non-Work Related Injuries****If your injury, illness, or medical condition is NOT linked to your employment**

You may be eligible for Disability Benefits. New York is one of the few states that require employers to provide Disability Benefits coverage to employees for an off-the-job injury or illness. Disability Benefits are temporary cash benefits paid to an eligible wage earner. They consist of weekly cash benefits to replace, in part, wages lost due to injuries or illnesses that do not arise out of or in the course of employment.

Cash benefits are 50 percent of a claimant's average weekly wage but no more than \$170/week. Cash benefits are paid for a maximum of 26 weeks of disability during 52 consecutive weeks. You can file a claim with your employer or insurance carrier using form DB-450, which may be obtained from your employer or on the New York State Insurance Fund website, [www.nysifdb.com](http://www.nysifdb.com).

For the purpose of Disability Benefits, a day of disability is one on which the employee was prevented from performing work because of disability and for which he/she has not received wages or remuneration.

**Pay attention to deadlines**

A claim for Disability Benefits must be filed within 30 days after you become disabled. While not filing within the required deadlines may jeopardize your ability to claim benefits, you may still be eligible if you can show that it was not reasonably possible to file a claim earlier.

**Where to get treatment**

Your employer or insurance carrier may designate a care provider and require you to be examined by that person. You must submit to examinations if requested. However, examinations may not be requested more than once a week; they must be held at a reasonable time and place; and you do not have to pay for these examinations.

**Responsibility for medical expenses**

Medical care is the responsibility of a claimant receiving Disability Benefits.

**Working from home, flexible schedules and other accommodations**

If you are working from home, you may lose your eligibility for some benefits such as Disability Benefits. If you receive any form of compensation or remuneration, you are no longer eligible for Disability Benefits under New York law.

**If you are currently unemployed**

In New York, Disability Benefits are paid to unemployed workers to replace unemployment benefits lost because of illness or injury. If you become disabled within twenty-six weeks of becoming unemployed, you are entitled to receive disability benefits to replace your unemployment benefits.

**3. The Family and Medical Leave Act (FMLA)**

The Family and Medical Leave Act (FMLA) covers public and private employers with 50 or more employees. You must have worked for your employer for at least 12 months to be able to claim FMLA leave, and you must have worked at least 1,250 hours over the past 12 months, or about 25 hours a week. You may be able to take up to 12 weeks of unpaid leave per year under the FMLA.

FMLA leave can be taken all at once or it can be taken in shorter blocks of time, such as 2 days a week, or 1 week a month, as long as it is taken for a single reason. FMLA can also be used to reduce the amount of time you work each day. For instance, you can opt to work on a part-time basis while you recover.

**If you are unable to work due to a serious health condition**

You may be able to take up to 12 weeks of unpaid leave per year under the FMLA. FMLA leave is available when you are unable to work because of a serious health condition.

**If you must take care of a sick family member**

You may be eligible to take up to 12 weeks of unpaid leave per year under the FMLA. You can use this leave to care for an immediate family member (spouse, child, or parent, but not a parent in-law). You can also use FMLA leave for the birth and care of your newborn child, or for the placement with you of a child for adoption or foster care.

**Pay attention to deadlines**

If possible, an employee must give an employer at least 30 days notice before FMLA leave is to start. This only applies to planned medical treatments or elective surgery. In the case of an unexpected need due to a serious illness, you must let your employer know as soon as possible, at least within 1 or 2 business days of when you first learn you will need leave.

**Working from home, flexible schedules, and other accommodations**

If you are able to do some work but need to have reduced activity to take care of yourself or a family member, you may use FMLA leave to work on a less demanding schedule. You should

also discuss with your employer and review your company's policies as they may allow you more flexibility.

### **Responsibility for medical expenses**

While you are on FMLA leave, your employer continues to provide you with group health insurance coverage, if health insurance was provided before the leave was taken. The terms of the insurance must remain the same as if you had continued to work. This means that if you were responsible for paying part or all health care premiums, you will need to make arrangements to continue to pay your share while on leave.

### **When you return to work**

After you take FMLA leave, employers must give you the same job or an equivalent one. They cannot use FMLA leave as a negative factor in employment decisions such as hiring, promotions, or disciplinary actions. FMLA cannot be counted under "no fault" attendance policies. Employers are not required to continue FMLA benefits or give jobs back to employees who would have been laid off or otherwise would have lost their jobs if they had continued to work during the FMLA leave period. For instance, if your company goes through a general layoff while you are on leave, you may not be entitled to returning to your position.

## **4. The Americans with Disabilities Act (ADA)**

If you have a physical or mental problem, you may be protected under the ADA.

The Americans with Disabilities Act of 1990 (ADA) gives civil rights protections to people with disabilities. It can help you gain equal opportunity in employment, among other fields. Employment practices covered by the ADA include: pay, promotions, hiring, training, firing, leave and other terms conditions, and privileges related to your occupation.

The ADA applies to employers with 15 or more employees. In order to be protected by the ADA, you must be qualified and able to perform the essential functions of the job

### **Essential functions of the job**

You must be qualified to perform the essential functions of the job to be protected from discrimination under the ADA. The essential functions are the fundamental duties required by the job itself. If the employer requires a certain level of education, employment experience, skills or licenses, you must be able to meet those qualifications. You must also be able to perform the essential functions of the job either on your own or with reasonable accommodation. An employer cannot fire you because your disability prevents you from completing tasks that are not essential to the job.

### **Reasonable accommodations**

If you are disabled, your employer may be required to provide you with reasonable accommodations under the ADA, unless the employer can show that such accommodation would cause undue hardship. In other words, if making arrangements would be very difficult, expensive, or otherwise unreasonable, your employer may not have to accommodate to your disability.

## **5. State and Local Laws**

New York State and City Human Rights Laws provide protections that are similar to the ADA; however, these laws apply to smaller employers (only 4 or more employees) and have broader definitions of what is considered to be a disability. **Individuals have up to one year to file a complaint under these laws.**

## **6. Helpful Tips**

**Review any plan to which your employer, union, association or any other relevant organization subscribes.** Make sure to review your company's policies and plans. You may be entitled to more benefits than the ones required by law under a plan agreed to with your employer. Your employer's policies may also contain more restrictions than the ones found in the law. Your employer may require, for instance, that issues that arise be resolved through alternative dispute resolution, as opposed to standard litigation.

Be careful in choosing to take FMLA leave, vacation time, or paid leave when dealing with your own illness or that of a family member. Make sure you understand the implications of any arrangement to which you agree. Note that your employer may choose to count your Workers' Compensation leave as FMLA leave, but the employer will have to notify you of that decision when the leave starts.

**Pay attention to definitions and eligibility requirements.** When claiming benefits, you must make sure that both you and your employer are covered by the law on which you base your claim. For instance, while your illness or injury may be considered a disability for the purpose of New York law, you may not receive the protection of the ADA.

A disability for the purpose of claiming New York Disability Benefits is defined as the inability of an employee, as a result of injury or sickness, to perform the regular duties of his employment (in the case of an employed person) or the duties for which the person is reasonably qualified by training or experience (for an unemployed person).

On the other hand, the ADA applies to you if:

- You have a physical or mental problem that substantially limits one or more of your major life activities;
- You have a record of having had such a problem in the past; or
- Other people think you have such a problem, even if you do not actually have it.

### **Records**

You should keep a record of medical visits, treatments and procedures you undergo as this information may become useful to you.

### **Communication**

While you do not have to disclose your medical information to your employer, it may be helpful to communicate with your employer regularly while you are away from the workplace.

**For more information or if you have concerns regarding your employer, contact the following offices:**

New York Workers' Compensation Board

<http://www.wcb.state.ny.us/>

For questions related to Disability off the job claims.

(800) 353-3092

For questions about workers' compensation on the job injuries/claims:

Albany	Hauppauge	Queens
866 750 5157	866 681 5354	800 877 1373
Binghamton	Hempstead	Rochester
866 802 3604	866 805 3630	866 211 0644
Brooklyn	Manhattan	Syracuse
800 877 1373	800 877 1373	866 802 3730
Buffalo	Peekskill	
866 211 0645	866 746 0552	

Equal Employment and Opportunity Commission- New York District Office

<http://www.eeoc.gov/field/newyork/index.cfm>

**Location:** 33 Whitehall Street, 5th Floor

New York, NY 10004

Phone: 1-800-669-4000

**Phone:** 1-800-669-4000

**Fax:** 212-336-3790

**TTY:** 1-800-669-6820

New York State Division of Human Rights

[http://www.dhr.state.ny.us/contact\\_us.html](http://www.dhr.state.ny.us/contact_us.html)

One Fordham Plaza, 4th Floor

Bronx, New York 10458

Tel No. (718) 741-8400

TDD: 1-718-741-8300

New York City Commission on Human Rights

<http://www.nyc.gov/html/cchr/html/contactus.html>

40 Rector Street, 10th Floor

New York, NY 10006

(212) 306-5070