



**Boxer & Gerson, LLP is the largest firm in the Bay Area representing injured workers. We are prominent in the fields of personal injury, employment discrimination, wrongful death, products liability, and social security disability appeals.**

**Workers' Compensation:**

The firm specializes in representing injured workers in pursuit of the remedies to which they are entitled under the workers' compensation law.

**Employment Discrimination:**

The attorneys at Boxer & Gerson represent employees who are subject to discrimination because of their race, disability, gender (including sexual harassment), age, national origin and/or ethnicity.

**Personal Injury/Wrongful Death:**

Boxer & Gerson prosecutes personal injury and wrongful death suits resulting from construction, defective consumer and industrial products, dangerous property, motor vehicle and professional negligence.

**Social Security Disability Appeals:**

The firm represents individuals appealing denials of Social Security disability benefits.

**Boxer & Gerson, LLP**  
The Rotunda Building  
300 Frank H. Ogawa Plaza, Suite 500  
Oakland, CA 94612  
(510) 835-8870

## INTRODUCTION

Workers' compensation law in California has undergone huge changes due to bills pushed by Arnold Schwarzenegger that were enacted in 2003 and 2004. If you have earlier reference materials on workers compensation they probably do not apply. Due to changes in the law, workers injured in 2004 and beyond have significant limitations on their benefits as a result of Schwarzenegger.

This booklet is intended to be a basic introduction to your rights and responsibilities under California law if you have any injury at work. However, California workers' compensation law is very complicated. Many of the recent changes in the law are still being interpreted by the courts. Schwarzenegger's administration created administrative rules for workers' compensation that will have a significant negative effect on your benefits and your rights.

Our web site [www.boxerlaw.com](http://www.boxerlaw.com) and [workerscompzone.com](http://workerscompzone.com) are a resource for more information about workers' compensation law.

**CAUTION: LEGISLATIVE CHANGES MAY OCCUR WHICH MAY CHANGE BENEFITS AND PROCEDURES DESCRIBED IN THIS BOOKLET**

**IF YOU HAVE A QUESTION CONCERNING YOUR PARTICULAR SITUATION, YOU ARE ADVISED TO CONTACT US.** Sometimes the rights of an injured worker are determined by other laws beside California workers' compensation law and by the terms of the union contract. Other applicable California and Federal laws may include the California Family Medical Leave Act, the Americans With Disabilities Act and California laws requiring reasonable accommodation and prohibiting discrimination on the basis of race, sex, age, disability, etc. In certain cases, California law concerning products liability and premises liability may apply. For each of these laws, there is a specific time limit for filing a claim. For example, if you believe that you have a discrimination claim or negligence claim in addition to a workers' compensation claim, you should consult a lawyer as soon as possible since there are strict time limitations to be observed. Failure to act promptly within the applicable time can cause you to lose all your rights. You must also make sure that you file any appropriate grievances which you are entitled to file under your union contract.

Boxer & Gerson, LLP is a firm of trial lawyers specializing in representing employees against insurance companies and corporations in personal injury, workers' compensation, wrongful death, products liability, disability and discrimination cases. We can be reached at 510-835-8870. Check out our web site at [www.boxerlaw.com](http://www.boxerlaw.com).

---

## TABLE OF CONTENTS

---

INTRODUCTION.....	1
WHAT IS AN INDUSTRIAL INJURY .....	3
THIRD PARTY ACTIONS .....	4
WHAT TO DO IN CASE OF INJURY .....	5
A. Report Injury .....	5
B. Request Medical Care.....	6
WORKERS' COMPENSATION BENEFITS.....	6
A. Medical Expenses.....	6
B. Temporary Disability .....	8
C. Permanent Disability .....	9
D. Death Benefits.....	11
E. Vocational Rehabilitation.....	11
F. Settlements .....	12
G. Penalties .....	12
TIME LIMITATIONS .....	12
QME EXAMS .....	13
INSURANCE COMPANY TACTICS .....	14
ABOUT BOXER & GERSON, LLP .....	14
REPRESENTATION BY COUNSEL .....	15
OTHER BENEFITS.....	16

## I WHAT IS AN INDUSTRIAL INJURY?

California workers' compensation is a no fault system. You are not entitled to a jury trial. You are eligible for benefits for any work connected injury or illness regardless of who was at fault.

A work injury may be the result of a single incident such as dropping an object on your foot or bending over to lift. Also, a work injury may be the result of work activities extending over a period of time. For example, a worker who has lifted heavy objects who eventually develops pain in his back may have suffered an industrial injury. This is known as a cumulative injury claim. Other examples of cumulative injury are carpal tunnel syndrome due to repetitive keyboarding, loss of hearing due to noise exposure and heart disease/heart attacks due in part to ongoing job stress.

An injury may be the result of diseases and illnesses that are produced, contributed to or aggravated by the employment. An example might include lung disease from smoke, chemicals or asbestos.

An injury may be an incident which aggravates a previous injury or condition. For example, if an employee has had prior back problems and re-injures his back while lifting on the job, he would be entitled to compensation benefits.

An employee may be entitled to workers' compensation benefits even though the injury did not occur while he was actually working. For example, an employee injured off work-site while on a special mission for the employer may be covered. Off the job heart attacks due to chronic job stress may be covered.

## II THIRD PARTY ACTIONS

IN ADDITION TO WORKERS' COMPENSATION BENEFITS, THE EMPLOYEE MAY BE ENTITLED TO SUE FOR MONEY DAMAGES FOR THE INJURIES IF THEY HAVE BEEN CAUSED BY A NEGLIGENT THIRD PARTY.

California workers' compensation law provides fixed benefits and makes them payable without regard to fault. But workers' compensation does not provide for full wage loss. That is why it is so important to analyze each accident to determine whether someone other than the worker or employer was at fault.

Ask yourself these questions:

- Was the accident the result of a defective product? (Was it poorly made or poorly designed?)
- Was the accident caused by a dangerous condition on the work premises? (i.e., where someone other than your employer owned or maintained the property)
- Did employees of another company or subcontractor do something that contributed to the injury?
- If a vehicle was involved, was another driver at fault?

If the answer to any of these questions is yes, a "third party" may be involved and it may be possible to sue the "third party" to collect full damages. In such a third party civil case, recovery is not limited to the amounts provided under the workers' compensation law for temporary and permanent disability. In a third-party case you can recover compensation for past and future loss of earnings, past and future medical expenses as well as payment for pain and suffering. In a third-party case you are entitled to a jury trial.

John Anton, Gary Roth and Tom McLaughlin of Boxer & Gerson, LLP are experienced trial lawyers with a proven record of major million dollar injury verdicts and settlements. Mr. Anton, Mr. Roth and Mr. McLaughlin handle construction accidents, unsafe/defective product cases, premises defect, wrongful death and major auto accident cases. For the last 3 decades Boxer & Gerson, LLP, has been one of the leading firms of trial lawyers in Alameda and Contra Costa Counties.

It is important to investigate an accident quickly to determine the cause of the accident, to interview witnesses and to take photos or control of the available physical evidence before the trail goes cold.

California now has a two-year statute of limitations from the date of injury that applies to a civil lawsuit for many accidents. However, if a public entity such as a city, county, school district, water district or state is at fault, a claim must be filed within 6 months of the accident.

## III WHAT TO DO IN CASE OF AN INJURY

### A. REPORT THE INJURY

Immediately following an injury on the job, the accident should be reported to someone in a position of authority such as a leadman, foreman, etc. Failure or delay in reporting the injury may result in a denial of workers' compensation benefits. A late reported claim may delay benefits until the insurance company has had an opportunity to investigate the matter.

Within one working day of knowledge of the injury, the employer shall provide a claim form to the employee who is then required to file it with the employer. The state form is known as a DWC-1 form.

The employee should also report the accident to his union shop steward or business agent so that he may be advised of any steps necessary in the protection of his rights and benefits.

### B. REQUEST MEDICAL CARE

If the accident is reported, and medical treatment requested, the employer will either tell the injured employee which doctor to see, advise him how to access the employer doctor network, or advise him to see his own doctor. If the injury is disputed, the employee may need to use group medical insurance or self procured treatment while the issue is resolved. However, an employer may be liable for up to \$10,000 in medical care if a claim has not been denied.

## IV WORKERS' COMPENSATION BENEFITS

### A. MEDICAL EXPENSES

An employee is entitled to receive medical care that is reasonable and necessary to cure or relieve his injury or illness, provided that the treatment is related to the injury in question. Due to Schwarzenegger's reforms, there have been additional limitations placed on treatments; including the ones below.

### MEDICAL GUIDELINES

Medical treatment in California must now conform with the state medical treatment guidelines. Some types of treatment are not favored under the guidelines. The "ACOEM" guidelines are the official set of rules for what medical treatments are permitted for work injuries in California, although the insurance adjuster can choose to voluntarily authorize other medical treatments. From time to time the State may adopt different guidelines and you may wish to check [www.boxerlaw.com](http://www.boxerlaw.com) for updates. The treatment guidelines are presumed correct and if your doctor wants to vary from the guidelines he must explain either how the treatment guidelines do not apply or what scientific evidence exists to rebut the guidelines.

### TREATMENT CAPS

For injuries after 1/1/04 there is a cap of 24 chiropractic visits, 24 physical therapy visits and 24 occupational therapy visits. The insurer can waive these caps and there may be exceptions after a surgery.

### UTILIZATION REVIEW

State law now allows "utilization review" (UR) of medical treatment authorization requests. A UR doctor never sees you. The UR doctor is supposed to follow the State treatment guidelines and does not have all your treatment records but is asked to "certify" or "not certify" treatment requests. Many doctors, injured workers and attorneys believe that the ACOEM guidelines and the utilization review process are being widely misused in a harsh and unfair manner. Workers have 20 days to object (in writing) to a UR denial. Workers with an attorney may need to request a hearing with a workers' compensation judge. Unrepresented workers may go to a QME evaluating

doctor on treatment issues. The best strategy in dealing with UR denials often depends on many factors that need to be analyzed based on the facts of your case and on what your doctor has written concerning the recommended treatment. Generally UR must be done within 5 to 14 days of insurer receipt of a doctor's report.

### MEDICAL PROVIDER NETWORKS

For many years employers have had medical "control" for the first 30 days after an injury. After 30 days from an injury the injured worker had "free choice" to designate a doctor. Now, if you did not predesignate a doctor before you were hurt, you may still have a right to "free choice" to designate a doctor if your employer has not established a medical provider network (MPN). However, if your employer set up a medical provider network after 1/1/05, you can be forced to go to a doctor in the employer medical network for treatment unless you predesignated a doctor. The medical provider networks must have doctors available within a reasonable geographic area near where you live. Failure to meet the access standards may mean that you can go outside of the MPN. If you are forced to accept treatment within the employers medical network, you can still change doctors within the network if you do not like the first doctor you see in the network. State rules provide for a formal "second opinion" and formal "third opinion" within the MPN network. There is also a procedure for a tie breaker fourth opinion by a doctor outside of the MPN if an opinion is requested.

### PREDESIGNATION

If you would like to avoid having to get your treatment from a company doctor, you can do so by predesignating a doctor before your injury. You can only predesignate a doctor if you work for an employer that provides a non-occupational group health plan. You must put your predesignation in writing and the doctor you predesignate must be your primary care physician. Also, the doctor must have previously directed your medical treatment, must have your medical records and must agree to be your predesignated doctor. We can provide you a predesignation form.

### SELF PROCURED TREATMENT

There are some circumstances when the injured worker may from the beginning receive treatment from a doctor of his or her choice at the insurers expense. If the worker

requests medical treatment and the employer refuses, the worker may go to the doctor of his/her own choice for treatment. If the Workers' Compensation Appeals Board finds that this treatment (called "self-procured") was reasonably and necessary to cure or obtain relief from the effects of the injury, the insurance company will have to pay for all reasonable medical costs incurred. (Although State treatment guidelines may still govern the scope of the treatment).

### LIFETIME MEDICAL

Medical treatment may be awarded by the Workers' Compensation Appeals Board for an indefinite period, even for life, depending on the facts of the case. The Workers' Comp Board cannot award non-industrial group medical benefits.

### SECONDARY INJURIES

In some instances workers develop other health problems as a consequence of the original injury. This may include depression, sleep or sexual problems, ulcers due to medication, etc. etc. You may be entitled to treatment and compensation for these problems.

### B. TEMPORARY DISABILITY

When the injured worker is unable to work because of a work related injury or illness, he is entitled to temporary disability compensation payments at the rate of 2/3 of his weekly earnings with the maximum as follows:

MAXIMUM WEEKLY	
1/1/08 to 1/1/09	\$916.33
1/1/09 to 1/1/10	\$958.01
1/1/10 to 1/1/11	\$986.69

For injuries after 1/1/07 temporary disability maximums will be increased according to a state cost of living formula. The rate applicable to your injury is the rate in effect at the time of your injury unless you are getting temporary disability more than 2 years after your injury. Check with your lawyer or business agent to confirm the proper rate. Some employers have supplemental or short/long term disability plans or sick leave programs which may supplement the regular temporary disability payment. You may wish to check with your union or Personnel Department about this.

No temporary disability compensation benefits are paid during the first 3 days off work unless:

- A. The injury requires hospitalization as an inpatient;
- B. Disability last more than 14 days.

For injuries after April 19, 2004, until January 1, 2008 temporary disability shall only extend from 104 weeks from the date the first temporary disability payment commenced. If there is any chance that an injury will create temporary disability for more than two years, it is recommended that the worker also apply for State Disability so as to establish a "claim date" in the event the worker eventually needs to receive State Disability following the cessation of two years of temporary disability.

For injuries after 1/1/08, a worker may draw up to 104 weeks of temporary disability during the 5 year period after an injury.

There are times when the attending doctor will place certain temporary work restrictions because of the injury. (For example, no lifting over 25 pounds, no repeated bending, etc.) When work is not available with these restrictions, the worker is entitled to continued payment of temporary disability compensation benefits (unless beyond the 104 week limitation).

Temporary disability compensation benefits will terminate:

- 1. When the injured employee actually returns to work or
- 2. When the injured employee's condition reaches a point where it is permanent and stationary, or at maximal medical improvement, that is, it is unlikely to change for better or worse.

### C. PERMANENT DISABILITY

"Permanent Disability" can be defined as that disability or impairment that remains after the employee has reached the point of maximum healing.

California uses a rating system to compensate for permanent disability. California workers' compensation law does not provide for full wage loss. Remember: If an injury is caused by a defective product, dangerous premises not owned by the employer, or negligence of someone other than the employer, you can seek full wage loss in a civil third party lawsuit.

Ratings may be based on a QME doctor's exam or a treating doctor's report. Permanent disability ratings are provided under the law in the form of monetary payments. The amount of these payments depends on a number of items, including the injured's age and occupation as well as the extent of impairment. The rating can range from 1% to 100% depending on how the permanent disability interferes with earning capacity in the general labor market.

Schwarzenegger's introduction of a new rating system called the "AMA guidelines" has resulted in lower ratings and thus lower awards and settlements for most injured workers. Workerscompzone.com will provide periodic updates on attempts to revise the rating system.

The weekly permanent disability rate payable varies between \$140.00 per week up to \$270.00 per week depending on the date of injury. Lump sums paid or weekly payments made after the worker becomes stationary will be deductible from the award or settlement.

Payments for permanent disability are payable in addition to any payments that the injured worker may receive for temporary disability and are over and above the cost of medical care. These payments are made at the weekly rate commencing the third day after the injury becomes permanent and stationary or the third day after the last date of payment for temporary disability, whichever date occurs first. These payments are required by law to be made at least twice in each calendar month and the benefits are payable until the total amount awarded is paid or until the death of the injured worker.

Substantial problems may occur in determining what rating is due the injured worker where he has a pre-existing disease or impairment and then suffers another injury. It is often medically difficult to determine how much disability is due to the injury and how much is due to the pre-existing condition. Frequently arguments arise because of this problem which may have to be resolved by the Workers' Compensation Appeals Board.

Amendments pushed by Schwarzenegger may now allow deductions from permanent disability awards for the portion of the disability "caused" by factors other than the injury. There are currently disputes in the courts as to whether this allows deduction for "pathology," retroactive "prophylactic restrictions" and "degenerative

disease process" even if those were not disabling at the time of the injury. See [www.boxerlaw.com](http://www.boxerlaw.com) for updates.

If a person suffers a permanent partial disability, he is entitled to a permanent disability rating even though he is able to continue work.

#### **D. DEATH BENEFIT**

When an injury or illness causes or contributes to the death of the employee, the surviving dependents are entitled to recover death benefits. These are the benefits for death due to injury after 1/1/06:

One Surviving Total Dependent	Two Surviving Total Dependents	Three or More Total Dependents
\$250,000.00	\$290,000.00	\$320,000.00

If there are no surviving total dependents, partial dependents may be entitled to benefits under some circumstances. Minor children are entitled to benefits under age 18.

In addition, actual burial expenses are payable up to \$5,000.00. Minor children under age 18 may be entitled to additional payments until they reach age 18.

#### **E. VOCATIONAL REHABILITATION AND ACCOMMODATION**

Workers injured after 1/1/04 do not receive retraining. Instead, they may qualify for a voucher (worth between \$4,000 up to \$10,000 depending on the percentage of disability awarded) that can be used at a state accredited school to pay for classes.

State (DFEH) law is often more favorable to injured workers than the Federal Americans With Disabilities Act (ADA). Under State Fair Employment (DFEH) law, the employer is required to give consideration to reasonable accommodation to a worker handicapped by injury. Demand should be made for reasonable accommodation if you believe that your job can be modified, alternative work can be provided, or transfer to a vacant position provided. Issues concerning reasonable accommodation and the ADA or State DFEH can be very complicated and you may wish to consult us. The firm conducts occasional informational workshops for workers seeking information about how to seek accommodations.

Over the years Boxer & Gerson, LLP employment lawyers have had a distinguished record in fair employment, reasonable accommodation, race and sex discrimination and other employment law cases.

## F. SETTLEMENTS

Workers' Compensation awards are paid on a weekly basis. The injured employee may receive a lump sum if his claim is settled by a Compromise and Release Agreement. Frequently, the insurance company will try to negotiate an end to the medical treatment in exchange for a lump sum. All settlements must be approved by the Workers' Compensation Appeals Board. A settlement by Stipulations may include a future medical award. Special settlement procedures apply to workers eligible for Medicare.

## G. PENALTIES

Insurance company delays of weekly payments or delays of medical treatment may entitle you to money for penalties. You should speak to a lawyer about penalties for delays. In addition to so-called automatic payments for late payments a penalty of 25% of the particular benefit unreasonably delayed may apply.

# V TIME LIMITATIONS

When an injury has occurred, the employer is required within one working day after receiving notice or knowledge of the injury, to provide the worker with a State of California claim form, commonly known as a DWC-1. Upon receiving the claim form, the worker should complete and file the claim with the employer as soon as possible. The employee is to give the employer a signed written notice of the injury or claim within 30 days of the occurrence of an industrial injury.

The statute of limitations for filing an application to collect workers' compensation benefits is one year from the date of injury in cases in which no benefits have been furnished or previously awarded. If benefits, compensation or medical treatments have been furnished by the employer or carrier, the application must be filed within one year after the date of the last payment, treatment or other benefit.

In the case of an occupational disease, the date of injury is considered to be that date on which the employer is dis-abled and knows or should know, as a reasonable person, that the disability has been caused by his work.

Where benefits have been furnished for an industrial injury, the injured worker has up to five years from the date of his injury to file an application with the Workers' Compensation Appeals Board for new and further disability.

In the event there are race, sex or disability discrimination claims or products liability or premises liability claims arising out of the work situation, different statutes of limitations apply.

To avoid any possible problems because of late filing, the worker should in all cases, file a DWC-1 form for any work injuries or occupational diseases. Once a claim form is filed, the employer has 14 days to accept or deny the claim. The employer can choose to put the claim on delay status, in which case the employer and carrier have up to 90 days to make a decision about whether the claim injured is compensable. If the employer's carrier puts the claim on delay for 90 days, the worker may, as a practical matter, be required to apply for State Disability so as to have income during the 90-day investigation period allowed by law.

**Be sure to check with a lawyer concerning the specific application of time limitations to your situation.**

# VI QME EXAMS

When there is a medical treatment or disability dispute, when the injured worker's treating doctor releases the worker from treatment, or when the doctor says the worker is "permanent and stationary," or at "maximal medical improvement" the insurance company may propose that the worker get an evaluation by selecting a doctor from a panel of three doctors off a State of California list. If you fail to act promptly, the insurer may choose the type of doctor and even choose the doctor for you! The procedure, known as a QME panel, is often proposed in a letter to the injured worker. **An injured worker should consult with an attorney before choosing a doctor from this panel and going through**

**with the evaluation.** Although some fair and reasonable doctors are on these panels, there tend to be more company and insurance oriented doctors on the QME panels than doctors favorable to injured workers. A worker who picks a doctor from the panel and goes to that doctor for a final evaluation will be unable to have an attorney send him or her to a physician for a later evaluation if the QME panel doctor's opinion is unfavorable. The worker essentially runs the risk of being stuck with an unfavorable opinion by choosing a QME panel doctor. **Call a lawyer before you choose a panel QME doctor and before the employer chooses one for you.**

## VII

### INSURANCE COMPANY TACTICS

Many insurance companies routinely hire investigators to follow injured workers around. Sometimes this can result in videos of off the job activities or activities while the worker is off work on disability. Although the vast majority of claimants are in fact truly injured and disabled, many insurance companies will go to great lengths to fight or discredit industrial claims, sometimes even alleging that fraud is involved. Workers' compensation fraud is a felony in the State of California . Never misrepresent your symptoms or activities to your doctor or insurance company.

## VIII

### ABOUT BOXER & GERSON, LLP

Boxer & Gerson, LLP is one of the Bay Area's leading trial lawyer firms. We specialize in personal injury, workers' compensation law, products liability, wrongful death, major vehicular accidents, employment discrimination, sexual harassment, wrongful termination law, elder abuse lawsuits and Social Security disability. Boxer & Gerson, LLP has ten lawyers specializing in workers' compensation and two civil trial lawyers who try major accident and employment law lawsuits and elder abuse & neglect cases. The firm has been nationally recognized for its efforts in the field of trial work. Firm attorneys are active in the California Applicants' Attorneys Association, the California Trial Lawyers Association and the California Employment Lawyers Association.

Lawyers from the firm have won some of the largest personal injury jury trial verdicts, employment law verdicts and out of court settlements in Bay Area history. The firm can be reached at (510) 835-8870 or found on the internet at <http://www.boxerlaw.com>.

## IX

### REPRESENTATION BY COUNSEL

An injured worker should consult with an attorney and has the right to be represented by one in connection with an industrial injury. All attorney fees in a workers' compensation case must be set and approved by the Workers' Compensation Appeals Board. No fee may be charged in advance.

A reasonable attorney's fee will be determined by a workers' compensation judge within specific guidelines. Some or all of the attorney's fee may be paid by the employer or insurance carrier and not by the injured worker if the worker is enforcing an earlier award.

In addition, medical/legal costs (court costs, medical evaluations, depositions, subpoenas and witness fees) are not paid for by the injured worker.

You have a right to be represented even if your employer or insurance carrier tries to talk you out of having a lawyer.

## X

### OTHER BENEFITS

Workers who are injured so severely that they are unable to do ANY work for a year or more (i.e., not just unable to do their former job) may qualify for Social Security Disability. The worker must initiate the claim by filing with Social Security. Boxer & Gerson, LLP handles appeals from denials of Social Security Disability.

Other benefits to be considered (if applicable) include: all rights and grievances under your union contract, State and Federal anti-discrimination laws, Family Medical Act benefits, long and short term disability policies (if you or your employer have them) and mortgage and credit disability policies (if you have them), and State Disability.

## CAUTION

**The legislature passed major workers' comp reforms in 2004. This booklet replaces and supersedes earlier versions.**

The following language is required by law:

**Any person who makes or causes to be made any knowingly false or fraudulent material statement or material representation for the purpose of obtaining or denying workers' compensation benefits or payment is guilty of a felony.**

Legislative changes could affect the benefits and procedures outlined in this booklet. If you have questions, check with us at (510) 835-8870 or (925) 753-4074 or (415) 499-0568 or (650) 552-0099.

We urge you to check our website  
([www.boxerlaw.com](http://www.boxerlaw.com))  
for more information about the firm.

Also, the firm sponsors the blog of partner Julius Young, [www.workerscompzone.com](http://www.workerscompzone.com), which cover developments in workers' comp law and employment - related issues.

Other information about workers' comp can be downloaded at  
[www.dir.ca.gov/CHSWC/Reports/workerscompguidebook-3rdEd.pdf](http://www.dir.ca.gov/CHSWC/Reports/workerscompguidebook-3rdEd.pdf)

© 2010 Boxer & Gerson, LLP