

9 Common Mistakes That Can Destroy Your Workers' Comp Claim

Ben Cochran + Jack Hardison
NC Workers' Compensation
Board-Certified Specialists

Thank you for downloading this book. We believe you will find it helpful. We would appreciate any all comments you might have.

If you have recently been injured on the job or if someone you care about has been injured, chances are you're worrying about what you should do next. You may also feel angry or frustrated. You might just wonder if there is a simple way to handle your unfortunate situation.

You may be asking these questions: "Can I trust this insurance company to take care of me? How do I deal with my employer? Should I get a lawyer? Will I lose any benefits because I didn't see a doctor right after the accident? Will I lose my job if I file a claim? How do I file a claim?"

If you have asked yourself any of these questions, then keep reading. Our hope is that this book will answer many of your questions and that it will ease some of your stress and frustration.

In the State of North Carolina, if you are injured by accident on the job, then you might be entitled to compensation for those injuries. These benefits are available to North Carolina residents pursuant to the North Carolina Workers' Compensation Act. The law makes it clear that you are entitled to medical compensation and monetary compensation for being unable to earn wages as a result of those injuries. The question then becomes "If I am injured on the job, how do I make sure that I receive every benefit to which I am entitled?"

Our names are Ben Cochran and Jack Hardison. We are board-certified specialists in workers' compensation law. This certification comes from the North Carolina State Bar and applies to only a small number of attorneys. We protect the rights of injured workers. Over the years, we have found that most people do not know much about workers' compensation. Unfortunately, this lack of knowledge often impairs the injured workers' ability to receive the necessary medical treatment and benefits that they so desperately need and deserve. It is for this reason that we have written this book to offer North Carolina residents at least an insight into the complex nature of workers' compensation. We have entitled it *9 Costly Mistakes That Can Destroy Your Workers' Compensation Claim*.

Throughout this book, we will be focusing on what we have found to be the most important pitfalls faced by injured employees in the State of North Carolina when dealing with their workers' compensation claims. But it is very important to understand that this document should not replace competent legal representation. This is not a complete "need to know" guide but is intended to be information about a very complex legal system.

With recent changes to the workers' compensation laws and with the way insurance companies and employers are handling claims; we are worried that you may not get the help you really need. The last thing you need is to be taken advantage of during this difficult time in your life.

Again, we want to thank you for requesting this book. We think the information provided will help you obtain fair compensation and adequate medical treatment for your on-the-job injury claim.

We have written this book so that injured workers have access to good, solid information before hiring an attorney or dealing with the insurance company. As we will point out later, not every case needs a lawyer! We truly believe that you should have this valuable information right now, for free, before you are pressured by an insurance adjuster to answer questions or to settle your case.

OK, are you worried about dealing with your employer's insurance company? Are you still wondering why we wrote this book and why our law firm gives it to North Carolina residents for free? We will give you some information that you need.

We are tired of insurance companies taking advantage of people before they have a chance to talk to an attorney. You may not even need an attorney to represent you in your case. But you should have this important information at the beginning of your claim. We wrote this book so that you, the injured employee, can be informed today and throughout the life of your claim.

Most attorneys require you to make an appointment. Some of the information that we are providing in this book will be provided to you during such an appointment but most of it will not. We believe that you should have this information right now so that you can read it yourself without any pressure to hire an attorney. The hiring of an attorney to represent you is an extremely important step that should not be taken lightly. It should be done without pressure being placed on you.

Also, this method of talking to you saves us time. We have packed a lot of information into this book. This saves us and our employees the hours of time that it would take just to talk to all of the new potential clients that contact us. We cannot accept every case. Each day we turn down injury cases that simply do not meet our case selection criteria. We often turn down cases where we could obtain fees because we do not believe it is in that person's best interests to hire a lawyer. So, rather than cutting you short on the phone, writing this book gives us a chance to tell you what you need to know so that you can make an informed decision about what steps to take with your case. Even if we do not accept your case, we still want you to be better educated about the workers' compensation system so that you don't fall victim to the big insurance companies or self-insured employers.

We are Not Allowed to Give Legal Advice in this Book!

Even though we might know most of the arguments the big insurance companies are going to make in your claim, we are not allowed to give legal advice in this book. We can offer suggestions and identify certain pitfalls and traps. Please do NOT take anything in this book to be legal advice unless you have agreed to hire us and we have agreed in writing to accept your case.

Important Notice:

We do not want to interfere with any legal relationship you might have now. If you are already represented by a lawyer, this book may raise certain questions. Please discuss these questions with your current lawyer. Each law firm does things a little different. Small differences don't mean that we are right and your lawyer is wrong. If you are having some problems with your lawyer, please sit down with him or her and try to work things out. It is usually better to work out problems and stay with your original lawyer than switching to a different lawyer when already involved with an injury claim. Our firm normally does not accept cases in which another attorney has been involved. Please do NOT ask us to take your case away from another lawyer unless you have already asked that lawyer to withdraw from your case when you contact us.

What is Workers' Compensation?

The State Legislature adopted the North Carolina Workers' Compensation Act to protect an injured worker from loss of income from a workplace injury and for payment of medical bills. The purpose of the Act is to make employers responsible for accidental injuries to their employees. This Act provides workers with full compensation for medical bills and partial compensation for lost wages if they have been injured on the job. The Act also compensates injured workers for any permanent disability or lasting inability to earn the same wages due to a compensable injury.

While the rules and regulations governing claims under the North Carolina Workers' Compensation Act are complex, we believe it is important that you have a basic understanding of what the term "Workers' Compensation" means. Workers' compensation is a "no fault" system. This means you generally do not have to show that your employer did anything wrong to have caused your injury. You simply have to prove that you were injured on the job as a result of an accident.

Workers' Compensation Myths

1. My employer will file all necessary forms to protect my claim.
The employer is required to file a Form 19 report of injury to the Industrial Commission. Defendants are required to file a report of injury to the Industrial Commission within five days of the employer's knowledge of the injury. This form does not protect your claim. Defendants do not always file this form. There is no real penalty for a failure to file this form. An injured employee must file his or her own notice to the employer and a Form 18 with the Industrial Commission. We will discuss this in more detail.
2. Workers' Compensation claims require that I sue my employer.
This is not true. You file a claim (not a suit) with the North Carolina Industrial Commission. The Industrial Commission is a state government agency that oversees workers' compensation claims in North Carolina. Workers' compensation is an administrative hearing process. The Industrial Commission is an administrative court or tribunal. It is not regular civil litigation. In most cases, an injured worker is really filing the claim against the employer's insurance company (unless the employer is uninsured or self-insured).

The Industrial Commission is the judicial body that hears motions and hearing requests through appointed judges called Deputy Commissioners. There is no right to a jury trial in a workers' compensation claim. An example of the difference between a state superior or district court judge and the Industrial Commission is that the Industrial Commission judges (deputy commissioners) are dressed in business suits. They do not wear black robes. If your case goes to a hearing, there are no sheriffs or bailiffs present.

3. I can collect for pain and suffering.

This is not true. The purpose of the Act is to compensate the employee for lost wages, medical treatment, diminished future earning capacity, and any permanent disability/impairment percentage rating. The Act never allows for or provides compensation for pain and suffering.

4. My employer states that since the accident was my fault, I can't pursue a workers' compensation claim.

This is not true. Workers' compensation is a no-fault system. The accident can be 100% your fault and you still are entitled to full benefits under the North Carolina Workers' Compensation Act.

Now that you have a general overview of what workers' compensation means in the State of North Carolina, you need to have a basic understanding of certain terms frequently used in a workers' compensation claim. What follows is a simple, plain-language description of key words you will often hear after filing a workers' compensation claim.

A Few Workers' Compensation Legal Terms

Accepted claim: This is when the insurance company accepts or agrees that your injury or illness will be covered by workers' compensation insurance.

"Medical-Only" claim: A claim in which the insurance company or employer accepts or agrees that you have suffered an injury but they believe that you are still capable of working. They are agreeing to pay for medical treatment only.

Denied claim: A denied claim is one in which the insurance company or employer does not accept or believe that they have a responsibility to provide compensation for your injury or condition(s).

Average Weekly Wage: This is the injured employee's average weekly salary prior to the injury. In order to determine the average weekly wage, you must look to the 52 weeks of the injured employee's salary prior to the date of the accident. Generally, you total the yearly salary or wages and then divide that number by 52 weeks. If there are not 52 weeks then most times the insurance company or employer simply uses the average of those weeks that the injured employee worked prior to the date of the injury. If someone has not worked for the employer for one year, the average weekly wage is determined by what is fair and reasonable. If the above options are not fair and reasonable, it can be determined by using the wages of another employee that performs the same job as the injured employee and who has worked for the employer for a year or more.

Compensation Rate: The compensation rate is two-thirds of the injured employee's average weekly wage.

Temporary Total Disability: This is the weekly disability compensation provided to the injured employee for his or her inability to work. The disability payments are provided at the employee's compensation rate (two-thirds of average weekly earnings).

Temporary Partial Disability: This is weekly disability compensation provided to the injured employee for his or her reduced or lowered average weekly wage due to the compensable injury. The disability payments are two-thirds of the difference between the injured employee's pre-injury wages and those wages after the date of injury.

Permanent Partial Disability rating: This is the percentage amount assigned to a body part. This is intended to determine the number of weeks the injured employee is entitled to compensation for their injury. The permanent partial disability rating is assigned by the treating doctor.

Maximal Medical Improvement (MMI): Once it is unlikely that the injured employee's condition will change or improve with or without further medical treatment, an employee is declared to be at MMI or maximum medical improvement. Maximum medical improvement is determined by the authorized treating doctor. Usually when the injured employee reaches maximum medical improvement (MMI) he or she is released from that doctor's care.

Modified or Light-Duty Work: This is temporary employment offered by the employer to the injured employee while they are on restrictive duty by the treating doctor. Restrictive duty means that the doctor has assigned work restrictions and the employee cannot perform the pre-injury job due to those restrictions.

Suitable Employment: Once the employee reaches MMI, the law requires that the injured employee be returned to suitable employment. Suitable employment is permanent employment available in the competitive marketplace that is within the employee's physical, educational, and vocational abilities. The employment also must be similar in wages as to the employee's pre-injury position. Suitable employment must also be 50 miles or less from the employee's home.

Vocational rehabilitation: If you are unable to do your regular job and your employer does not or cannot offer other suitable employment, you will qualify for this benefit. It may include job placement counseling, re-training and a vocational rehabilitation maintenance allowance. The insurance companies for the employers almost always pay for this. Vocational rehabilitation is usually only offered to employees that are receiving temporary total disability benefits (a weekly workers' compensation check) after they have been declared at MMI (maximum medical improvement).

Now that we have a general knowledge of the intent of the North Carolina Workers' Compensation Act along with an overview of some very key terms, it is time to discuss those common mistakes made by injured employees.

COMMON MISTAKE #1 FAILING TO PROPERLY REPORT YOUR ACCIDENT

Without a doubt the most important step if you are injured on the job is to report the injury to your employer. Many employers have an accident policy in place that is found in an employee manual. If this is the case with your employer, follow the guidelines set out in the manual. If there is no policy, we find that it is most helpful to let everyone know of the injury. This would include your supervisors, co-workers and any human resource people that your employer may have.

Many employers and insurance companies tell injured employees that they cannot file the claim because they were not notified of the accident in a timely manner. Some employers tell the injured worker that they had to have notice within 24 hours of the accident. **THIS IS NOT THE LAW.** Some employers tell injured employees that were recently hired or that are injured during a probationary period of early employment that they are not yet entitled to worker's compensation benefits. **THIS IS NOT THE LAW.**

The law generally requires written notice of the injury by accident within 30 days. But there are exceptions to this rule. If the employer or an agent or representative of the employer had actual knowledge of the accident, the employer is also deemed to have notice of the injury.

This is why it is so important to report your injury to everyone at your place of employment.

There are other exceptions that may apply to your case. Therefore, we recommend contacting an attorney immediately if your claim has been denied by the insurance company or employer for failure to timely report the claim. An attorney can determine if the appropriate time limits have been applied and can determine if your claim meets one of the exceptions. If the Industrial Commission thinks an employee is telling the truth, it is rare that it will deny a claim due to a delay in reporting an injury. If an employer tells you that you are not entitled to workers' compensation because of a delay in reporting the injury, this is not likely to be true and you should immediately call an attorney.

COMMON MISTAKE #2 FAILING TO GIVE A FULL AND ACCURATE HISTORY TO MEDICAL PROVIDERS

We cannot stress this enough. If you fail to tell the medical providers how your injury occurred and that it occurred while you were at work, you could be harming your claim from a legal standpoint. This could prevent you from getting the medical treatment that you need.

We all know that it is very important to advise the medical providers of all our complaints and symptoms so that the doctor can give us the proper treatment. But it is just as important to provide as much detail about your injury and the fact that it is work-related to protect your claim for benefits.

When the insurance company or its attorney is investigating a claim, they take statements from the injured party and witnesses. They also look at and inspect the medical records. They are looking to see what information is in the medical records, including the employee's reports of how and where the injury occurred. They will also read and review the records to determine which body parts the employee reported to the doctor as being injured.

For this reason, when you talk to any doctor or medical provider be clear and detailed when describing the nature of your injuries and how they occurred. Always identify where you were hurt, how the injury occurred and if there was anything unusual that caused your injury. Provide information to the doctor about anything unusual about the incident, such as a trip, slip, fall, or an injury performing a task that was not a usual, normal duty of the job. Do this every time you see a new doctor or medical provider. This is particularly important when you are first seen after your injury and during the appointments in the first days, weeks, and months after the injury. However, it continues to remain important throughout the life of your claim.

Sometimes an injured employee comes to our office and the insurance company has either denied their claim completely or they do not wish to provide medical treatment to a specific body part. One of the biggest hurdles we find is that the accident or injury was not reported in the medical records until several weeks or months after the initial date of injury and was not reported at the first date of treatment. Insurance companies read these records. If the injury, body part or the fact that it occurred at work is not in the medical records, they will often use that as a reason to deny the claim or fail to compensate the employee.

If it becomes necessary for your case to go to trial, the medical records are often the most important evidence that will be entered in at trial. When medical records are being evaluated by a deputy commissioner, they are given a great amount of weight as they are written by a third party (a doctor) that has no stake or interest in the claim.

It is a common belief that patients are most honest when they are reporting their physical complaints to doctors as they want to get better and they know that the doctor needs all the information to make a proper diagnosis. Remember that the practice of reporting how the injury occurred and the fact that it occurred at work is recommended not only for your first visit.

to the doctor on or around the date of injury. Continue to repeat this information for every appointment and every time you see a different or new doctor.

This advice also applies to intake forms at doctor offices. Every time you see a new medical provider or doctor, they will provide intake forms for you to fill out or complete. When the insurance companies and their lawyers request medical records from these doctors, they also usually receive the intake forms. Sometimes the intake forms ask the employee where or how they were injured and sometimes they do not. Any time you see a new doctor or medical provider; make sure to put on the intake forms that the injury occurred at work. Provide all body parts injured and explain how the injury occurred. As noted above, describe anything unusual about the incident, such as a trip, slip, fall, or task that was not a usual, normal part of the job. Provide this information somewhere on the intake form regardless of whether the form asks about it or has a specific question asking for that information.

COMMON MISTAKE #3 FAILURE TO FILE A FORM 18

In the State of North Carolina there are certain time limitations that govern when an injured employee can pursue a workers' compensation claim. In order to be clear, we are not speaking about notice to your employer of the accident. That was already discussed. These are two separate concepts. We are speaking about the actual request for compensation under the North Carolina Workers' Compensation Act.

In order to help protect your right to compensation, you need to file a Form 18 with the Industrial Commission. If you fail to immediately file a Form 18 with the Industrial Commission, your claim may be barred after a period of time. The time or tolling of a workers' compensation claim may be different for different injured employees depending on the circumstances.

There is no definite statute of limitations as can be found in other areas of law. You may have heard that you have two years to pursue benefits in the State of North Carolina. While this may be true in most instances, it is not true under all circumstances. It depends on the type of benefits that are being requested (such as medical treatment or disability benefits).

The rule to remember is that if you want to get workers' compensation benefits, file a Form 18. If a Form 18 has not been filed in a case where we have been retained, we file a Form 18 every time. The Form 18 lets the Industrial Commission and the employer know that the injured party is asking for workers' compensation benefits.

COMMON MISTAKE #4 FAILURE TO COMPLY WITH MEDICAL TREATMENT

In the State of North Carolina, the workers' compensation insurance company or employer generally has the right to direct the medical treatment of the injured worker. If you have been injured and you are out of work receiving weekly benefits from an insurance company, it is very important that you comply with the recommendations of the treating doctor and that you attend all medical and therapy appointments.

If you fail to attend medical appointments, you might lose your benefits. Medical appointments are appointments for any type of treatment that is reasonably necessary to "effect a cure, provide relief, or tend to lessen the period of disability." If the injured employee fails to attend medical appointments on purpose and that have been scheduled by the insurance company, employer, or the doctor, the insurance company or the employer will usually request that the injured employee be ordered by the Industrial Commission to attend these appointments.

Of course you may be asking yourself why the insurance company or the employer would want to order the injured employee to attend medical appointments. Wouldn't this cost them more money? A request for an order to cooperate with medical treatment is done by the insurance company or employer when the injured employee is out of work and receiving disability benefits. If an employee is ordered to attend medical appointments and the injured employee fails to comply with this order and continues to miss appointments, the insurance company or its lawyer will file an application to stop or suspend your benefits. If your benefits are suspended, it can be a very lengthy process to reinstate your benefits. It can take months or even years to get them reinstated.

The workers' compensation laws include vocational rehabilitation in the definition of medical treatment. If an injured employee is receiving vocational rehabilitation, cooperating with that process is important in order to keep receiving your weekly benefit check. This means that it is important to apply for jobs, find job leads, and to follow the instructions of the vocational rehabilitation counselor. Most of the time, if an employee is receiving vocational rehabilitation the employer could not offer suitable employment and the employee's injury prevented him or her from returning to the job they were doing at the time of the injury. Many times, the only reason that employers and insurance companies provide vocational rehabilitation is because they hope that the injured employee will not cooperate. If any injured employee does not do what the vocational counselor is asking him or her to do, is missing meetings, or fails to comply, the insurance company or its lawyer will request that the Industrial Commission suspend the employee's benefits. It is best to comply with the vocational rehabilitation process to avoid this.

Once again, it is very important to cooperate with medical treatment. It in your best interest to help your injury heal and it keeps the insurance company from having a reason to stop your benefits.

COMMON MISTAKE #5 NOT KNOWING WHEN TO RETURN TO WORK

Most employers, at the request of the workers' compensation insurance company will provide light duty to injured workers. Either the employer or the insurance adjuster may then request or require that the injured worker return to work.

But what type of light duty is being offered? Prior to returning to work, it is necessary to know what you will be doing for the employer. Some employers simply say, "we will find you something." Unfortunately this might cause a hostile environment that could cause problems for your claim, your settlement recovery, and your employment.

If you return to work without an established job position, the employer will be forced to find or come up with tasks over and over again. The employer may be required to make other employees assist you with tasks that you could do yourself prior to your injury. The employer might make other employees do more of the heavy, more difficult tasks to make up for the fact that you cannot perform those tasks. Other employees often dislike having to do this. Those employees and the immediate supervisor often begin to "make fun of" the injured employee without even realizing it. Many times, the injured employee is asked to do specific tasks without regard to the employee's restrictions.

Too often employers return injured employees to work at jobs that are not suitable to their work restrictions. Other times they tell employees that they will be doing a light duty job and then return them to their regular, normal job.

In order to avoid this situation, ask for a specific job description prior to returning to work. Then ask or require that it be submitted to your treating doctor for review before you agree to return to work. If your doctor does not approve the job as something you should be doing, do not return to work. If the treating physician is confident that you will be able to perform the position, you may return to work.

Remember; perform only those tasks within your work restrictions. If an employer asks that you perform duties outside of your restrictions, show them the doctor's note. Take the note with you to work and keep it with you. If the doctor fails to approve the job description or the employer asks you to work outside of your restrictions, you do not have to return to work.

If the employer fails to provide a job description or if the doctor fails to approve the job description and the insurance company or employer refuse to provide weekly benefits, contact an attorney immediately.

Also, if your benefit checks ever stop without you returning to work and without you having ever received in the mail an application for the employer to terminate or stop your benefits, contact an attorney immediately.

COMMON MISTAKE #6
FAILING TO REQUEST A SECOND OPINION

Although the insurance adjuster may be correct in telling you that he or she can tell you where to treat, he or she cannot keep you from having a second opinion. In the State of North Carolina if you are directed to treat with a particular doctor and that doctor releases you after treatment at maximum medical improvement, the law allows you to have a second opinion with a duly qualified licensed doctor of your choosing. It is all too common that injured employees contact our office and tell us that they were told that they could not have a second opinion.
THIS IS NOT THE LAW!

One law states that if you want a second opinion on work restrictions, treatment recommendations or any other medical opinion besides your permanent partial disability rating, you can suggest a doctor or doctors for a second-opinion or “independent medical examination.”

If you and the insurance company are unable to agree on a second opinion doctor within 14 days of your request, you can ask the Industrial Commission to award a second opinion with a doctor that you choose.

Under this first law, if you have been released and you are still in pain you should seek a second opinion or “independent medical examination.” If the second opinion doctor recommends additional medical treatment, you may apply to the Industrial Commission to have a change in treating doctors. Then you can request the recommended medical treatment. The insurance company or the employer is not going to freely allow this. It might be necessary for you to obtain a lawyer to be successful in this request. Remember, you are not simply required to stay and remain in pain and having ongoing symptoms. There are options.

Another law states that if you receive a permanent partial disability rating as a result of your injuries (this is discussed in more detail in the next section) and you are not satisfied with this rating then you may also get a second opinion. Do not allow the insurance company to mislead you. You do not have to agree with the insurance company on the doctor for this type of second opinion. You are entitled to a second opinion on a disability/impairment rating with any doctor you request that will agree to see you. This law only allows the second opinion to be used for the disability rating. It cannot be used to show different work restrictions, medical recommendations, or medical opinions.

COMMON MISTAKE #7 SETTLING FOR THE RATING ONLY

We have been discussing many different mistakes that can be made during your workers' compensation claim. But what happens when the doctor releases you and says that you are as good as you are going to get? As noted previously, this is called maximum medical improvement. It is at this point in time that you may be entitled to a settlement.

The Industrial Commission has set out guidelines that assist the treating doctor with how to assign a permanent partial disability rating. It is called the North Carolina Ratings Guide. It takes into account several different considerations including, but not limited to, the range of motion, the tendency to form arthritis, and the structural damage caused by the injury or any surgeries that were necessary. Once the doctor has assigned a permanent partial disability rating, the insurance company can create a Form 26A utilizing this information. This establishes the settlement amount of your case.

In workers' compensation there is no payment for pain and suffering. The amount of the settlement is guided by the law. The settlement amount is calculated by using a math formula that includes your compensation rate multiplied by your rating then multiplied by the number of weeks assigned to your injured body part. This type of settlement should only be used if you have returned back to work with your employer and you are still earning the same or greater wages. By this we mean that you are making the same or greater wages then you were before you were injured. If you are not back to work at a real job or you are making significantly less money, do not settle on the rating alone!

COMMON MISTAKE #8 SETTLING YOUR CLAIM WITHOUT A JOB

If you have been released by the treating physician at maximum medical improvement and you have been assigned a permanent partial disability rating, the insurance company or the employer is going to be ready to settle. But what happens if you can no longer perform your previous position and the employer does not have another job for you within your restrictions?

As previously stated, you should not settle for the rating. Workers' compensation in the State of North Carolina is intended to compensate the injured employee for the loss in wage earning ability. If you can no longer perform your position, a scheduled injury settlement will not compensate you for your injuries. The insurance company or employer will have to assist you with finding another job in the job/labor market that offers you similar wages and that is within the work restrictions assigned by your doctor.

The insurance company or the employer will do anything within their power to convince you to resolve your claim without truly attempting to offer you compensation

for your inability to return to your position. The insurance company and the employer do not wish to put the injured employee into vocational rehabilitation because it is expensive. When an injured employee is in vocational rehabilitation, the insurance company must continue to provide temporary total disability benefits to the injured employee. But they also have to pay a trained specialist to assist the employee in finding a suitable job. These claims are all about money and cost saving to the insurance company or the self-insured employer. But to the injured employee it is about your future, your well being and the ability to return to work and earn wages. If you cannot return to work with your previous employer due to your restrictions, do not settle in a hurry. Do not accept the insurance company's first offer. Make sure that the compensation that you receive is fair and reasonable. After the case is settled it is business as usual for the insurance company.

Remember, an attorney can better help you analyze and determine the value of your claim. You know more about doing your job than an adjuster or insurance company lawyer does. They know better than you how to determine the value of your workers' compensation claim or settlement. It is common for insurance companies to make settlement offers to an unrepresented employee that are much, much less than would be offered to an employee that has a lawyer. Do know that insurance companies often take advantage of employees that do not hire lawyers.

COMMON MISTAKE #9 NOT HIRING A LAWYER, OR HIRING THE WRONG LAWYER

We mentioned this in passing several times in the previous sections. While it seems that most people should know it is important to seek advice when they are injured, statistics show that many people do not hire a lawyer. Here are five main reasons why people don't hire a lawyer immediately after an injury:

1. They don't know if they really need a lawyer so they do not talk to one.
2. They don't know a lawyer personally, so they don't bother to look for one.
3. They aren't sure if they can trust a lawyer, so they don't want to use one.
4. They believe it when the insurance companies tell them that they will end up with less money if they hire an attorney. (By the way, that is absolutely NOT true.)
5. They believe that the employer will retaliate against them, treat them poorly, or that the employer and insurance company will not run the claim as smoothly to punish the employee for hiring a lawyer.

These reasons are not good ones. In spite of all the lawyer jokes you might have heard, there are many honest, hard working, and ethical lawyers who can help you deal with an insurance company or workers' compensation claim. While it is true that a lawyer will usually get a portion of the money you collect from the insurance company, it is also true that a good lawyer can dramatically increase your chances of getting all the benefits to which you are entitled. In addition, represented employees typically receive more money even after the attorney fee is paid than they would settling the claim without an attorney and without the insurance company paying a portion of the settlement to the employee's attorney.

Why do you need an attorney in a workers' compensation claim? Immediately after being injured at work, you are thrown into a complicated, adversarial legal system. In other words, the insurance company or the employer has in place a team of adjusters, investigators, and attorneys who are working against you. These people are seeking to pay as little as possible and to get you back to work as quickly as possible. They are not too concerned about whether you are able to perform the job, whether it is suitable, or whether you are forfeiting benefits or decreasing the value of your claim by returning to work.

Many job injury victims are already in distressed physical, mental, and financial circumstances. They sometimes choose to delay what they consider to be the hassles involved in retaining a workers' compensation attorney. Some may have had a bad experience with an attorney (in a divorce, for example), or they simply do not like or trust attorneys.

Some injured workers, in an attempt to avoid paying legal fees, try to represent themselves. We often get calls from these employees seeking legal representation or advice only after they realize that "they are in over their head." Unfortunately, there are many mistakes (such as providing damaging statements to adjusters) that cannot be "undone" by even the most experienced workers' compensation attorney. Plus, if you wait too long to get legal help it gets harder to find evidence and witnesses. You also risk losing your claim because of the deadline for filing a Form 18. Many times, injured employees do not call an attorney until the insurance company has filed with the Industrial Commission to stop paying benefits. You are in a better position to retain and keep your benefits if you have an attorney that is familiar with your case and already has all the records, medical reports, and information about the case before the insurance company tries to stop your benefits.

The bottom line is...considering the legalities and complexities of the established system for compensating job injury victims, hiring an attorney is usually necessary to "level the playing field," and to ensure that you receive maximum benefits and proper medical treatment for your work injury.

This general rule almost always applies in any work accident that involves serious injuries. BUT, if you have been involved in a work accident involving small or minimal injuries, you might not even need a lawyer.

If you didn't contact a lawyer immediately, as we have recommended, time has passed. If you only had a couple of doctor visits and you only lost a few days from work, then you probably don't need to hire a lawyer. But you certainly should at least contact a lawyer and get some free advice. Many law firms won't even talk to people in this situation – as soon as they determine there's no "good case" for them, they just want to get you off the phone and move on. Our law firm isn't like that. If you call us with a problem or a question, even if we know we can't represent you, we will still try to answer your questions or we will refer you to another lawyer or to a government agency that can help you.

OK, now you've decided either to hire a lawyer or not. If you do want to hire a lawyer, how do you choose the best one for you? Hiring a lawyer is easy. Hiring the RIGHT lawyer takes a little extra time and work. You see, there is as much difference between individual lawyers as there is between doctors, accountants, or other professionals. Choose carefully!

Some law firms are personal injury "factories." They simply settle all their cases for much less than they might have, in order to get rid of the case as quickly as possible with doing as little work and spending as little time as possible on the case. They just want to make room for the next one. If they can't settle a case quickly, they refer it to another law firm to take the case to court.

Let us suggest that you stay clear and avoid such a situation. You need a law firm that will handle your case from start to finish, will pay personal attention to you, will be available when you need them, will keep you informed about your case, and will return your phone calls promptly. THERE IS A DIFFERENCE!

We think a lawyer should give a personal commitment to ALL of his or her clients. Just look at our Client's Bill of Rights near the end of this book. We commit to every client we have that they will be treated fairly. Then we GUARANTEE to treat every single client with the respect, attention, and dignity that person deserves. We can't stress enough to you how important this is!

The best way to learn about a specific law firm is to ask your friends and neighbors about them. If someone you know has used that firm in the past and has been satisfied with them, you are most likely getting a good recommendation. Another way to learn is to ask the lawyers in the firm to send you some free information about them and the firm, and then set up an appointment to meet with them and ask a lawyer any questions that you may have. We want clients to ask us questions. This is because we want the clients to be confident that they have chosen the best firm for them.

Here are 9 questions you might consider asking a law firm before hiring them:

1. Are you a Board Certified Specialist in Workers' Compensation Law by the North Carolina State Bar?
2. How much experience does your firm have in representing injured employees?
3. Have you ever been sued for legal malpractice?
4. Are you covered by a legal malpractice insurance policy?
5. Have you ever been disciplined by the State Bar of North Carolina?
6. Will you copy me with everything you do on my case?
7. Do you have licensed adjusters who will assist the lawyers in the day-to-day handling of my case?
8. Who at your office (both attorneys and non-attorneys) will be communicating with the insurance company on my case?
9. If I am not happy with your firm during the first 30 days after I hire you, can I take my case and owe you no fee?

2011 Changes to the Law: Things to Look Out For

In 2011, the state legislature made some changes to the workers' compensation laws. Most of those changes did not benefit injured employees. The new laws were put in place to benefit employers.

Below are a few of the law changes of which employees should be aware.

1. One of the changes to the law applies to when an injured employee is receiving workers' compensation benefits. Many times in this situation, the insurance carrier will attempt to try to find the injured employee another job with another employer. This occurs when the employee cannot return to the job he or she was doing prior to the injury. Any job that the insurance company tries to obtain for an employee must be within 50 miles, one-way, from the employee's home. If the job is over 50 miles from the employee's home, the employee will not lose workers' compensation benefits for refusing to take the job.
2. Another change in the law involves failing to provide information or misrepresenting information to the employer when applying for a job. An employee will not be entitled to compensation if (a) At the time of hire; (b) The employer relies on one or more false representation by the employee that was a substantial factor in the employer's decision to hire the employee; and (c) There is a connection between the employee's failure to provide information to the employer and the employee's injury.

This law would be relevant if an employee had injured a body part prior to working for the employer or in a previous workers' compensation injury. For example, pretend that an employee had previously injured his back while working at a prior job. The employee fills out an application for the new employer that asks if he sustained any prior back injuries or injuries at all. The employee tells the employer in the application that he has never had any back injuries. If the employee injures his back while working for the new employer it is possible that he or she will not be entitled to any compensation for that injury.

3. Another change in the law involves employer and insurance companies being able to contact your doctor by sending a typed or written letter. If the employer and insurance company contact your doctor to ask questions by sending the doctor a letter, you must be sent the letter at the same time that it is sent to your doctor.

If the letter is being sent to the doctor to ask about something that is not contained in your medical records, you must be sent a copy of the letter and must be told that the insurance company intends to send the letter to your doctor. You have 10 days to agree for them to send the letter or to object to the Industrial Commission and ask the Commission to not allow the letter to be sent to your doctor.

If you go to a doctor visit and the doctor has a letter from the insurance carrier or its attorney, make sure the letter was sent to you at the same time. If it was not, the insurance company did not follow that law. If the doctor provides information that helps the insurance company's case, you have an argument that that information cannot be considered by the Industrial Commission.

There are limits on what the insurance company or its lawyer can ask your doctor in a letter. The only information they can request involves (a) Diagnosis; (b) Course of Treatment; (c) Anticipated time out of work; (d) Relationship of injured employee's condition to the employment; (e) Work restrictions; (f) Work to which the employee might be able to do; (g) Anticipated time the employee will have work restrictions; (h) Percentage of a permanent impairment rating.

4. Sometimes an insurance company or its lawyer might want to talk to your doctor in person or on the telephone to ask them questions. If the insurance company intends to do this, they must tell you in advance and tell you the purpose of the oral communication. The insurance company must also give you a chance to be present and participate in the discussion at a time that is convenient for you. If you choose not to take part in the discussion, the insurance company must provide you a summary of the communication within 10 days.

5. There are times when the insurance company wants a second opinion from a different doctor than the one that is treating the injured employee. This is called an "independent medical examination." If you are receiving a weekly workers' compensation check and the insurance company asks you to attend one of these appointments, you should do it. If you refuse to attend this second opinion or "independent medical examination," it could result in the loss of

your weekly check. The new law also provides that an employee must attend an independent medical examination even if his or her claim is denied.

6. An important change in the law in 2011 involved how long an injured employee can receive weekly workers' compensation benefits. A "cap" was placed on the number of weeks that a workers' compensation check can be received. Workers' compensation benefits or a weekly check can now be received for only 500 weeks. This is a little more than nine and a half (9.5) years. If an employee has received a workers' compensation check for 500 weeks, that check will stop.

This law does have exceptions. After an employee has received benefits for 425 weeks, the employee can continue to receive benefits if it shows the Industrial Commission that the employee has a total loss of the ability to earn wages. If the employee is able to show that he or she has no ability to earn wages, the benefits will be extended. These benefits might not be continued after 500 weeks if the employee has reached the age of retirement and is receiving full retirement benefits. This law applies to more serious injuries that result in the employee being out of work permanently or for a long time.

This book has only hit some of the highlights of what you need to do to increase your own NEGOTIATING POWER with the big insurance companies or self-insured employers. As you can see, it is an information game. One advantage you have during the beginning stages of your case is that you alone have access to the evidence. The more of it you can collect, the more of it you can use to your own advantage.

SO WHAT ELSE CAN WE DO TO HELP YOU?

In our law practice we have found that many people are FRUSTRATED, SCARED, INTIMIDATED and UNSURE OF WHAT TO DO. Sometimes people find it hard just to ask for help. Others may have already been intimidated by the big insurance companies or others they've been dealing with. Some may even believe that it is wrong to bring any claim for personal injuries at all.

We have found that once people talk to us or others at our law firm about their claims and about the legal process, they feel much better and more at ease with the whole system. After talking with us, they understand what's fair, and they feel good about doing the right thing.

I think people also appreciate the opportunity to talk with us at no charge, and with no pressure.

ONE THING YOU DON'T WANT IS TO BE PRESSURED!

We don't blame you in the least. We certainly don't like to be pressured either. That's why you must be careful and you must take the time to make the best decisions possible. You can't make a good decision if you are being PRESSURED!

To be completely honest, one of the reasons we wrote this book is to see if our firm can help you. We would like to talk with you about your legal rights, and to answer your questions without any pressure – FREE OF CHARGE!

SO HERE IS WHAT OUR FIRM WOULD LIKE TO OFFER YOU

We offer a free consultation. You can meet with us at our office, which we prefer, and that you really should prefer (see my previous statements about this), or one of our investigators can come to your home if you just can't get to our office. We will talk about your accident and related injuries and we will discuss your legal rights.

It is our hope that during this discussion we can help you with the following:

- Find a way for you to get the medical help you need and to get compensated for your injuries.

- Find out if the big insurance company or employer you are up against is withholding benefits to which you are entitled or is pressuring you to make a quick settlement.
- See if you might be exposed to risks you might not even know exist that could spell disaster for you.
- And LOTS MORE!

Remember, you are under no obligation, and no one will pressure you. We are here to help you! That is our personal guarantee to you.

Our goal is simply to create a situation where you feel comfortable talking with an expert about your legal options and to answer any questions you may have. We understand that this can be a very difficult time. You may not be feeling well because of the pain from your injuries. Medication you're taking for that pain might make you a little "fuzzy." Stress can make things even worse.

If this book makes sense to you, then you've probably thought of a few more questions. Feel free to call us while this is still fresh in your mind. Waiting any longer may just cause more stress or put you at greater risk. We would be happy to get you the information that could ease your mind. Remember, the law is filled with tricky time limitations and notice deadlines!

Why are we willing to do all this? We want you to see for yourself that there are lawyers who are honest, competent, and are willing to work hard for your best interests. And we do not want you to be taken advantage of or be without knowledge of your claim.

You may be wondering how we earn our money and whether you will have to pay an hourly fee. Well, you should understand that we only get compensated when we collect money for our clients. We only get paid if you get paid. You never really have to write us a check. When your case is settled, the insurance company will send two separate checks, one is your settlement amount and the other is our fee.

The more you get, the more we get. And the faster you get your money, the faster we get our fee. We have every incentive to devote ourselves to your case and fight for your right to receive the compensation you deserve. We go the extra mile for our clients and deliver exceptional client service and personal attention to all of our clients. That is why our law firm's motto is: Putting YOU first!

Please allow us to take just a few extra minutes to explain our CLIENT BILL OF RIGHTS. Lawyers will tell you that it is impossible to offer a guarantee in the legal business. WRONG! We say that law firm clients should settle for nothing less! Remember, your attorney works for you – not the other way around.

Client's Bill of Rights:

At Hardison & Cochran we believe we can promise our clients quality service with personal attention. We believe that as our personal injury client you are entitled to have the:

1. Right to talk to your attorney the same day you call.
2. Right to be updated regularly and on a timely manner as to the progress of your case.
3. Right to our respect.
4. Right to expect competence from our firm and all who work here.
5. Right to know the truth about your case.
6. Right to prompt attention from us.
7. Right to have your legal rights and options explained in plain English without legal mumbo jumbo.
8. Right to a fair written fee agreement with our firm.
9. Right to a fair fee for the work we do.
10. Right to make the ultimate decision on your case.

If you think this approach is fair and you want to take advantage of the free consultation with no obligation, just give us a call. We will make time for you to talk with us.

Our firm is so committed to quality work and personal attention that we offer a no-risk guarantee to potential new clients. If during the first 30 days after hiring our firm you are not completely satisfied with our services, you may ask for your file back and discharge us with no questions asked. You will not owe us attorney fees.

**DO NOT HIRE AN INJURY LAWYER WHO
WON'T MAKE THESE TWO GUARANTEES!**

Thanks again for downloading this book. We hope it has been of some assistance to you. If you still have questions or need something further explained, call us or go to lawyernc.com and submit your question. There is no charge!

Remember, trying to do it yourself usually ends up causing more frustration for you and less money for your settlement. If you call our office, we will arrange a conference to discuss your case at no charge. You can ask any questions and we will discuss options that are available to you.

This free consultation puts you under no obligation to use us as your attorney and we will not pressure you in any way. Our job is to help and to counsel you. But you are the one who makes the decisions!