



*This article presents general guidelines for Georgia nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.*

## **GEORGIA WORKERS' COMPENSATION BASICS** **Michael Memberg – Ken David & Associates, LLC**

The Georgia Workers' Compensation Act (the "Act") sets up the statutory framework for what is required of employers and what benefits an injured employee can receive. The Georgia State Board of Workers' Compensation (the "State Board") is the administrative body in place to set rules and regulations and hear claims.

This guide will address several basic questions and provide basic information and guidance about Georgia workers' compensation law. Every employer and employee is different, so workers' compensation is naturally a very fact-specific area of the law. This article cannot address every question, but it will provide a solid foundation for a general understanding of workers' compensation in Georgia. At the end of this guide is a chart of frequently-used forms and important time periods.

- **WHAT IS THE GOAL OF THE WORKERS' COMPENSATION SYSTEM IN GEORGIA?**

The workers' compensation system in Georgia is designed to provide injured employees with medical treatment and income benefits while they are recovering from work injuries with the goal of returning them to work, if possible. Employees are entitled to benefits for all injuries arising out of and in the course of their employment. Workers' compensation is a no-fault system. In other words, it generally does not matter if the employee's or the employer's negligence caused the accident. As a trade-off for this no-fault system, employees are not allowed to sue their employer for damages stemming from a work injury. Workers' compensation is the exclusive remedy for employees injured while working for an employer that is subject to the Act (see below).

- **IS MY ORGANIZATION REQUIRED TO BUY WORKERS' COMPENSATION INSURANCE?**

Employers who have three or more employees regularly in service in Georgia are required to maintain workers' compensation insurance coverage for their employees. There are some exceptions, but paid staff will typically be counted towards the three-employee rule. Additionally, Georgia law also counts corporate officers as employees, even if the corporate officers are not paid wages. However, up to five corporate officers can opt out of workers' compensation coverage by completing Form WC-10 and sending it to the workers' compensation insurance carrier, or to the State Board if there is no coverage.

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Any officer who opts out is not considered an employee. You can discuss the impact of officers opting out with your insurance representative. As a rule of thumb, employers who have three or more employees, whether paid staff or unpaid corporate officers (who have not opted out), are required to carry workers' compensation insurance.

- **WHAT ABOUT ORGANIZATIONS THAT DO NOT HAVE TO BUY COVERAGE?**

Employers with fewer than three employees regularly in service (whether paid staff or unpaid corporate officers) are not subject to the Act. Most employers with corporate officers will have three or more employees, as defined by Georgia law, but corporate officers who opt out of coverage are not counted as employees. Employers who are not required to maintain workers' compensation coverage are not protected by the "exclusive remedy" of workers' compensation. In other words, an employee could sue the employer for a work injury rather than having to file a workers' compensation claim—lawsuits allow for "pain and suffering" damages, which an injured employee could not get with a workers' compensation claim. Any employer may voluntarily elect to be subject to the Act by purchasing workers' compensation coverage.

- **WHAT DOES WORKERS' COMPENSATION INSURANCE COVER?**

A workers' compensation policy will typically cover all costs and expenses related to the injury, including weekly income benefits, medical benefits, and permanent partial disability benefits (benefits described below). If necessary, the insurer will also provide an attorney to defend a claim.

- **WHAT IF COVERAGE IS NOT CURRENT WHEN AN INJURY OCCURS?**

If an employer subject to the Act fails to maintain proper coverage, the claim will still be processed like any other claim. However, the employer, as opposed to an insurance company, will be directly responsible for all benefits owed to the employee. In addition, the State Board may impose civil penalties on the employer for failure to maintain proper coverage.

- **WHAT IS AN INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT?**

In general, any injury that occurs while someone is performing their job is an injury arising out of and in the course of employment. Georgia law requires a causal connection between the employment and the injury. In other words, something about the job must have in some way led to the accident or the injury. There are countless fact-specific scenarios in which someone may be hurt at work, and special types of injuries (e.g. heart attacks, strokes, or hernias) have special considerations. As a rule of thumb, an injury occurring while someone is on the clock and doing their job as normal is probably arising out of and in the course of employment.

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- **WHAT SHOULD HAPPEN BEFORE ANY INJURIES OCCUR?**

First and foremost, employers should do their best to provide a safe work environment for their employees. Even though workers' compensation is a no-fault system, everyone will be better served from a safe work environment, and the best way to lower the cost of a claim is to prevent it from happening in the first place. Other than maintaining a safe workplace, the most important thing is to have a valid posted panel of physicians (explained below).

- **WHAT IS A POSTED PANEL OF PHYSICIANS?**

The posted panel of physicians is a list of six doctors the employee can see for treatment of a work-related injury. There cannot be more than two "industrial clinics" and there must be at least one orthopedic surgeon on the panel. Employees can seek emergency treatment as needed at the employer/insurer's expense. Employer/insurers typically select physicians for the panel who will treat patients with the goal of returning them to work. The panel needs to be clearly posted, and employees need to be trained on the location and purpose of the panel. Employees can have one "free" change to a different panel doctor. If there is not a valid panel, an injured employee can seek treatment from any doctor they want at the employer/insurer's expense.

- **WHAT OBLIGATIONS DOES AN INJURED EMPLOYEE HAVE FOLLOWING AN INJURY?**

If an employee has an injury arising out of and in the course of their employment, they have an obligation to provide notice of the injury to their employer/insurer within 30 days. Notice can be given directly or indirectly, and lack of notice is a defense to a claim. The employee is entitled to seek medical treatment from a panel physician or an emergency room if needed.

- **WHAT ARE THE EMPLOYER'S OBLIGATIONS FOLLOWING A REPORTED INJURY?**

The State Board provides forms for employers to keep records of injuries. All injuries must be reported on Form WC-1 (forms are available on the State Board website: <http://sbwc.georgia.gov>). The employer/insurer has 21 days from knowledge of the injury to investigate and decide whether to controvert (challenge) the claim. Common reasons for controverting a claim include lack of notice and the reasonable belief that the injury did not occur at work.

- **WHAT MEDICAL BENEFITS ARE EMPLOYEES ENTITLED TO FOLLOWING AN INJURY?**

For accepted claims, an employer/insurer is required to furnish all medical treatment which will give relief, effect a cure, or return an employee to suitable employment. These are generic terms, but most treatment will typically fall under one of these categories. The treatment will be under the care of one authorized treating physician (the "ATP"). The ATP will treat the patient and determine if the employee can return to work, and if so, at full duty

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or on light duty with restrictions. The ATP may refer the employee to other doctors, although these referral physicians cannot make their own referrals. Employees are entitled to lifetime medical benefits for their work injury so long as they comply with their ATP and do not settle their claim.

- **WHAT INCOME BENEFITS ARE EMPLOYEES ENTITLED TO FOLLOWING AN INJURY?**

An employee is entitled to income benefits only after they miss more than seven days from work (calendar days, not work days). The purpose of this waiting period is to reduce claims filed with the State Board (note: if an employee misses 21 consecutive days, they are entitled to income benefits for the waiting period). Employees who are taken totally out of work are generally entitled to two-thirds of their average weekly wage (based on the previous 13 weeks). These benefits are known as temporary total disability (“TTD”) benefits. Employees who return to work with restrictions are generally entitled to two-thirds of the difference between their average weekly wage and what they make post-injury (note: if the employer does not provide a light-duty job, the employee still collects TTD). These benefits are known as temporary partial disability (“TPD”) benefits. The Act sets the maximum rate and length of time an employee may receive income benefits. For injuries occurring after July 1, 2007, the current maximum TTD rate is \$500/week for a maximum of 400 weeks and the current maximum TPD rate is \$334/week for a maximum of 350 weeks. Employees have one year from the date of accident or the last employer-provided medical treatment to file a claim for benefits or two years from the last payment of income benefits to request additional TTD or TPD benefits. Any time income benefits are commenced or suspended, the employer/insurer must file Form WC-2.

- **WHAT HAPPENS IF AN EMPLOYEE SUSTAINS A PERMANENT PARTIAL DISABILITY DUE TO AN INJURY?**

In some cases, an employee will be deemed to have reached maximum medical improvement following a work injury by the authorized treating physician, and they may be issued a permanent partial disability rating either to a specific body part or to the body as a whole. In such a case, the employee would be entitled to a certain number of weeks of additional permanent partial disability benefits (“PPD”) paid at their TTD rate, based on a chart as provided for in the Act. (maximum of 300 weeks). For example, if someone has a 10% disability rating to the body as a whole, they will be entitled to 30 weeks of PPD benefits. In some cases, PPD benefits can be paid in a lump sum.

- **WHAT HAPPENS IF AN EMPLOYEE’S INJURIES ARE SO SEVERE THEY WILL NEVER RETURN TO WORK?**

Certain injuries (e.g. the loss of a limb or severe burns) are considered so severe by the State Board that they are deemed to be catastrophic. In other cases, an employee’s injuries may be such that there are no jobs they will be able to perform. In either case, an employee will generally be entitled to lifetime TTD benefits.

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- **WHAT DEATH BENEFITS ARE PROVIDED?**

If an employee is killed by an accident arising out of and in the course of their employment, the employer owes up to \$7,500 in reasonable burial expenses as well as weekly benefits to the employee's dependants. If there are no dependants, the employer/insurer pays the State Board the lesser of \$10,000 or half the dependent benefits which would have been owed. There are several considerations regarding what benefits dependants may be entitled to; however, that is beyond the scope of this guide.

- **WHAT HAPPENS IF AN EMPLOYEE IS RELEASED TO RETURN TO WORK AT FULL DUTY?**

If an employee is released to work by the ATP at full duty, they are generally not entitled to TTD or TPD benefits, and the employer/insurer may unilaterally suspend weekly benefits if they were being paid.

- **WHAT HAPPENS IF AN EMPLOYEE IS RELEASED TO WORK WITH RESTRICTIONS?**

If an employee is released to work by the ATP at light duty with restrictions, the employer can bring the employee back to work at their same job if it falls within the restrictions. The employer can also offer a light duty job, which the employee is required to attempt if the ATP signs off on the job description. If the employee refuses to attempt a light duty job offer, benefits can be suspended. However, the State Board can be lenient on what constitutes an attempt at the light duty job. If an employee does return to work at light duty, they will generally be entitled to TPD benefits if they are making less per week than before the injury.

- **WHAT HAPPENS IF THERE IS NO LIGHT DUTY AVAILABLE FOR THE EMPLOYEE?**

If an employer is unable to provide a light duty job and weekly benefits have already been commenced, the employee will be entitled to ongoing benefits. There is a process in place for an employer/insurer to limit its exposure in such a situation. Once an employee is given light duty restrictions by the ATP, the employer/insurer should complete a Form WC-104 and mail it to the employee with the medical report from the ATP listing the restrictions (within 60 days of the restrictions being set). In such a case, the employer/insurer can reduce the benefits from TTD to TPD after 52 consecutive or 78 aggregate weeks of the employee being released to light duty. Also, the cap on benefits would be reduced from 400 weeks to 350 weeks.

- **WHAT HAPPENS IF AN INJURED EMPLOYEE SUBSEQUENTLY IS FIRED, QUILTS, ETC.?**

Even if an employee quits or is fired for cause, they may be entitled to income benefits if they can prove a causal connection between their injury and their disability. If an employee

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is fired for cause and not because of the injury, the employee has to prove they were unable to find a job after a diligent job search before being entitled to income benefits. No job search is required if the employee is fired due to the injury.

- **WHAT HAPPENS IF THE EMPLOYEE HAS A PRE-EXISTING CONDITION?**

If an employee aggravates or re-injures a pre-existing condition, they may still be able to prove they are entitled to benefits. A current employer/insurer may be able to avoid liability if the employee has a pre-existing work injury incurred at a previous employer/insurer (or vice versa, a previous employer/insurer can try to place responsibility on a current employer/insurer). The determination is typically based on the differences between the job duties. As for aggravations of pre-existing conditions, an employer/insurer is generally required only to provide treatment that returns an employee to a pre-injury baseline.

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## FREQUENTLY-USED FORMS

WC-1	Employer's First Report of Injury	Section A Immediately Section B-C Within 21 days of employer knowledge
WC-2	Notice of Payment or Suspension of Benefits	Immediately upon suspension, commencement, or modification of benefits
WC-3	Notice to Controvert	<ul style="list-style-type: none"> <li>•Within 21 days unless accepted claim</li> <li>•If accepted claim, within 81 days</li> <li>•Anytime IF newly discovered evidence (difficult to prove)</li> </ul>
WC-4	Case Progress Report	Within 180 days of date of accident
WC-6	Wage Statement	Within 21 days if less than maximum
WC-100	Request for Settlement Mediation	
WC-104	Notice to Employee of Medical Release to return to Work with Restrictions or Limitations	Within 60 days of the release to Return to Work
WC-200(b)	Request/Objection for Change of Physician/Additional Treatment	Within 15 days of Certificate of Service
WC-205	<a href="http://www.files.georgia.gov/SBWC/Files/wc205.pdf">http://www.files.georgia.gov/SBWC/Files/wc205.pdf</a> Request for Authorization of Treatment or Testing by Authorized Medical Provider	Within 5 business days of receipt
WC-240	Notice of Employee of Offer of Suitable Employment	10 days prior to the date the employee is expected to return to work & within 60 days of doctor's approval of job
WC-240A	Job Analysis (describes light duty job)	Filed with WC-240
WC-R1CATEE	Request for Catastrophic Designation	Within 20 days of Certificate of Service

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### IMPORTANT TIME PERIODS

Notice to Employer	30 days
Notice to State Board/Employer's First Report of Injury	21 days
Waiting Period	7 calendar days
Waiting Period Recoverable After Disability	21 consecutive days
Initial Payment (due from date of employer knowledge)	21 days
Penalty for failure to timely make initial payment	15%
Notice to Controvert from time of employer knowledge and before first payment	21 days
Subsequent TTD payments due	weekly
PPD: Obtain rating	within 30 days of knowledge of entitlement
PPD: Pay benefits	21 days after knowledge of rating
Penalty for failure to pay income benefits with award	20%
Penalty for failure to pay income benefits without award	15%
Time to Controvert: From due date of payment of first benefits	60 days
Time to Controvert: Based upon newly discovered evidence or change in condition	anytime
Time to Respond to a WC-205	5 business days

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