NYSNA OCCUPATIONAL HEALTH & SAFETY

Safe Nurses, Safe Patients, Safe Workplace.

NYSNA HEALTH & SAFETY GUIDE

WORKERS' COMPENSATION GUIDE

Nurses have some of the highest injury and illness rates of any occupation nationwide. While NYSNA's focus is on preventing work-related injury and illness, it is important that all nurses know their rights under the New York State workers' compensation system.

What Workers' Compensation Covers

1. Medical costs, with no out-of-pocket expense, for medical care, diagnostic testing, medication and any other medical expenses related to your work-related injury or illness.
2. Partial wage replacement (up to two-thirds of the NYS average weekly wage) for lost work time after the first week out of work.
3. Death benefits.
4. Loss of use awards for permanent injury.

Coverage continues for life, regardless of a change in employer or employment status.

How to File a Claim

1. Notify your employer within 30 days of the incident occurring. Notification typically takes the form of submitting your employer's incident reporting form. However, any written notification to the employer is acceptable to the NYS Workers' Compensation Board (NYS WCB). NYSNA strongly recommends that the employer be notified as soon as possible.

2. Fill out workers' compensation paperwork provided by the employer or the employer's workers' compensation carrier. If you have questions regarding this paperwork, or did not receive it from your employer, contact your HR Department and your NYSNA Representative. The NYSNA Occupational Health and Safety Representatives can help answer questions regarding workers' compensation documentation. They can be reached at healthandsafety@nysna.org.

3. File a C-3 form with the NYS WCB (this does not go through your employer and may not be provided to you by your employer). This form can be found at https://www.wcb.ny.gov/onlineforms/c3/C3Form.html

4. If you do not receive a workers' compensation number from your employer or employer's workers' compensation carrier, or if you are told that your claim is denied, you may need to contact a workers' compensation attorney. You may also want to contact a workers' compensation attorney if you have questions about your case. A list of workers' compensation law firms can be found at https://cf-simple-s3-origin-cloudfrontfors3-146697677730.s3.amazonaws.com/nysnaDocuments/2024-05completeAttorneyReferralList.pdf

5. More information on filing a claim can be found at https://www.wcb.ny.gov/content/main/Workers/file-claim.jsp

For more information please contact the NYSNA Occupational Health and Safety Representatives at healthandsafety@nysna.org.

New York State NURSES ASSOCIATION. National Nurses United

Receiving Medical Care for a Workers' Compensation Injury or Illness

In New York State you have a right to see a medical provider of your choosing as long as that provider is authorized by the NYS WCB.

Your initial medical visit can be to a medical provider who has not been authorized by the NYS WCB, but all subsequent visits must be to an authorized provider. Please note that most hospital emergency departments are authorized NYS WCB providers.

Your employer or your employer's workers' compensation carrier may send you a list of authorized medical providers, but you are not limited to those providers.

NYS WCB-authorized medical providers can be found through the NYS Occupational Health Clinic Network https://www.health.ny.gov/environmental/workplace/clinic.htm or at the NYS WCB website https://www.wcb.ny.gov/health-care-provider-search/. If you have any questions regarding finding a NYS WCB-authorized medical provider, contact NYSNA's Occupational Health and Safety Representatives at healthandsafety@nysna.org.

Please note: The NYS WCB will not begin processing your claim until a NYS WCB-authorized medical provider has submitted a CMS-1500 form to the WCB.

You should not be asked to pay any out-of-pocket expense for medical care that is being provided for a work-related injury or illness.

What is an Independent Medical Examination (IME)?

An employer may request that an employee who has filed a workers' compensation claim be examined by a medical professional other than the worker's own treating provider. The employee must attend this examination or risk losing benefits. This medical professional is called an Independent Medical Examiner, also referred to as an IME. The IME is not, as the name suggests, independent. The IME is paid for by the employer or the employer's workers' compensation carrier, and their findings are often used to fight the findings and recommendations of the injured worker's medical provider. The IME does not provide medical care. Examinations are often brief and not thorough. If, as the result of an IME, benefits are cut off or decreased, the injured/ill worker should request a hearing at the NYS WCB.

What If My Employer Fights My Workers' Compensation Claim?

Your employer, or your employer's workers' compensation carrier, may notify you that your claim has been denied. Your employer is not the ultimate decision maker on your case. If this occurs, you should request a hearing with the NYS WCB. You can also request a hearing if your employer or your employer's worker' compensation carrier or an IME disagrees with your medical provider's determination of your readiness to return to work, or if there is a disagreement about your need for a medical procedure or diagnostic testing. ***The NYS WCB law judge who hears your case is the independent decision maker, not your employer.***

NYSNA STRONGLY recommends that you do not attend a NYS WCB hearing without a workers' compensation attorney. You can find a list of workers' compensation law firms at https://cf-simple-s3-origin-cloudfrontfors3-146697677730.s3.amazonaws.com/nysnaDocuments/2024-05completeAttorneyReferralList.pdf

You will not pay out-of-pocket for a workers' compensation attorney. If you win payment at a hearing, the law judge will determine how much of that payment will be paid to the attorney.

Can I be Fired While I'm Out on Workers' Comp?

While out of work due to a work-related injury or illness, your job is protected for 12 weeks as required under the FMLA. However, many public sector workers in NYS have job protection for up to 1 year, or up to 2 years for an injury caused by assault. Many NYSNA contracts also have job protection for a longer period than the 12 weeks covered under the FMLA. For information on whether your contract has extended leave provisions for workers' compensation, contact your NYSNA Representative or review your union contract.

Return to Work Accommodations and Additional Leave Time

When you are ready to return to work, you may not yet be fully healed and may need some type of workplace accommodation. You may also need to request additional leave time as an accommodation under the Americans with Disabilities Act (ADA). Many healthcare employers are resistant to providing accommodations, including additional leave, but you are entitled to the same accommodation rights under the ADA as any other employee. While the ADA requires employers

to provide "reasonable accommodations," the law gives employers significant flexibility regarding what is considered "reasonable" and what skills and activities they consider necessary to perform a job. It is important to use the term "reasonable accommodation" and to put your request in writing to Human Resources. Keep proof of all written communications between you and your employer. When requesting additional leave, it is also important for your doctor to provide an estimated return date as indefinite leave will generally not be granted as an accommodation.

While your NYSNA Representative may be able to help you in this process, it can be difficult to get the accommodations you need to return to work. Further information on workplace accommodations under the ADA can be found at https://www.dol.gov/agencies/odep/program-areas/employers/accommodations. This fact sheet from the ADA National Network may also be useful in answering basic questions about workplace accommodations under the ADA: https://adata.org/factsheet/reasonable-accommodations-workplace. If you believe your employer is violating the ADA, you may file a complaint with the U.S. Equal Employment Opportunity Commission (EEOC).

Who Can Help Me with This Process?

Filing a workers' compensation claim is often a far more complex and confusing process than it should be. Please do not hesitate to reach out to your NYSNA Representative, the NYSNA Occupational Health and Safety Representatives at healthandsafety@nysna.org, or the NYS WCB Advocate for Injured Workers at https://www.wcb.ny.gov/content/main/Workers/WhatIsAdvocateInjuredWkrs.jsp for any assistance you may need.