



**Commonwealth of Massachusetts
Executive Office of Labor and Workforce Development**

Legal Process for a Massachusetts Workers' Compensation Claim

Department of Industrial Accidents

Senior Judge Omar Hernández

What is Workers' Compensation?

The Massachusetts Workers' Compensation system is in place to make sure that workers are protected by insurance if they are injured on the job or contract a work-related illness.

Under this system, employers are required by M.G.L. c. 152, Sec. 25A to provide workers' compensation insurance for all of their employees.

The Department of Industrial Accidents (DIA) is the agency responsible for administering the workers' compensation law in Massachusetts.

With 50,000 to 60,000 workers' compensation claims being filed each year in Massachusetts, the DIA's twenty-seven Administrative Judges adjudicate 10,000 to 12,000 disputed cases annually.

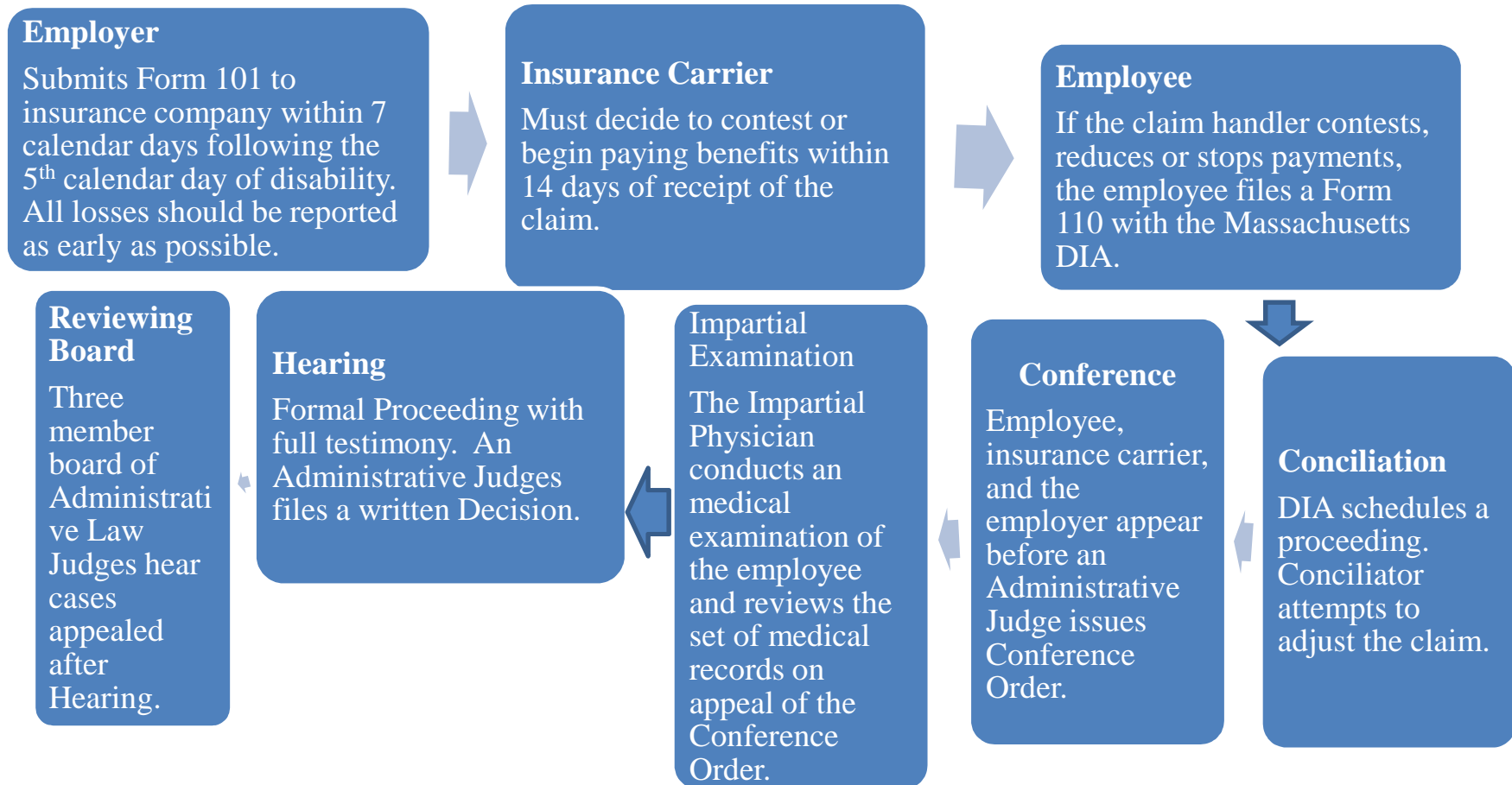
Who is Eligible for Workers' Compensation?

- All employees must be covered (other than sole proprietors).
- Workers' compensation coverage protects employers from most lawsuits.
- Employers without workers' compensation insurance risk BOTH a lawsuit from the employee and a lawsuit by the Workers' Compensation Trust Fund.
- Employees who work for an employer without workers' compensation insurance are covered by the Workers' Compensation Trust Fund.

What do Workers' Compensation Benefits Cover?

- **Medical bills:** prescriptions and co-pays for work-related illness or injury (WRII).
- **Lost Wages:** 60% of the average weekly wage (capped at 60% of the state average weekly wage) if an employee loses five or more calendar days of work as a result of a WRII.
- **Cost of travel:** to and from a doctor's office or medical facility for treatment of a WRII.
- **Disability benefits:** available for those employees who's WRII prevents them returning to work.

Claim Adjudication Process for Massachusetts Workers' Compensation Claim



What happens if an Employee suffers a work-related injury or illness?

- The insurer has fourteen days to investigate the claim and determine whether or not to pay the claim.
- If the insurer decides to pay the claim, a Form 103, Insurer's Notification of Payment is sent to the employee and the DIA.
- If the insurer denies the claim, they must send to the employee, a Form 104, by certified mail, the Insurer's Notification of Denial. The form must include the reasons for denial and sent to the DIA.

What happens if an Employee suffers a work-related injury or illness?

- When the insurer denies, reduces or stops payment of benefits, the employee files a Form 110, Employee's Claim with the DIA.
- The employee must submit medical documents to support the claim, including medical reports and medical bills to the insurer and the DIA.
- Upon receipt of the claim, the DIA will schedule a Conciliation.

Conciliation

- This proceeding, scheduled approximately three weeks after the initial filing, is conducted by a Conciliator whose function is to bring the parties together, to receive relevant documents and to discuss possible resolution.
- The Conciliator's function is to ensure that the moving party has presented sufficient evidence of workplace injury and a medical basis for the claim or modification to allow that party to proceed to Conference, the next level.
- Currently, the Conciliation Unit is resolving forty-seven percent of all claims.
- If a voluntary agreement cannot be reached, the claim is referred to an Administrative Judge for a Conference.

Conference

- The parties receive a notice of Conference about six weeks prior to the proceeding.
- The Administrative Judge assigned for Conference has jurisdiction and controls all proceedings until issuing a written decision at the Hearing level or presiding over a settlement conference.
- All inquiries about the case status from receipt of the Conference notice forward are directed to the office of the assigned Administrative Judge.

Conference

- There is limited discovery in the workers' compensation system. Discovery tools are available through regulations, statutes and discovery motions as well as the expected good will of opposing counsel.
- Attorneys are expected to present evidence at Conference sufficient to establish a prima facie claim.
- The employee must be injured while in the course of employment for a particular employer. The injury must be causally-related and arise out of an industrial event, whether it is traumatic in nature or cumulative, as in repetitive injuries or long-term exposures to toxic materials.

Conference

- An employee must produce sufficient medical evidence to prove the diagnosis, causal-relationship, extent of physical limitation and a suggestion as to prognosis.
- In order to comply with the Department's new paperless system, Document Management System (DMS), both parties must electronically submit a set of certified and relevant medical records including those of treating physicians and reports from expert examiners to the Administrative Judge to review prior to issuing an Order.

Conference

- At Conference, the parties provide to the Administrative Judge the procedural history, the factual history and the course of the employee's medical care, status and prognosis.
- The Administrative Judge may ask questions concerning the facts of the claim, the legal theories and/or the law to be applied. The Administrative Judge may ask about potential settlement negotiations.

Conference

- The Conference proceeding offers the insurer's counsel the opportunity to conduct discovery not otherwise available, for example, to inquire about the employee's prior injuries or related medical conditions.
- All inquiries are made through the Administrative Judge; direct examination of the employee is not permitted until Hearing.

Conference

- The Conference Order can be appealed by either party by filing an Appeal of a Conference Proceeding (Form 121).
- The appeal must be submitted within 14 calendar days of the Conference Order. There is a \$650 fee to appeal the Conference Order if the appeal is based upon a medical issue.
- The medical records are forwarded to the Impartial Physician.
- The fee pays for the employee to be evaluated by an Impartial Physician.
- Currently, there are 152 Impartial Physicians on the DIA roster.

Impartial Examination

- The Impartial Physician will review the set of medical records on appeal of the Order. That set must be submitted in a PDF format, clean, without any highlights or extraneous notations.
- Only medical records are sent to the Impartial Physician; bills and other non-medical evidence are excluded. The relevant material must be presented chronologically, by physician and institution.
- Pursuant to Section 11A, the Impartial Physician examines the employee and files a written medical report prior to the Hearing.

Impartial Examination

- The report of the Impartial Physician shall, where feasible, contain a determination of the following: (i) whether or not a disability exists, (ii) whether or not any such disability is total or partial and permanent or temporary in nature, and (iii) whether or not within a reasonable degree of medical certainty any such disability has as its major or predominant contributing cause a personal injury arising out of and in the course of the employee's employment.
- The report shall also indicate the Impartial Physician's opinion as to whether or not a medical end result has been reached and what permanent impairments or losses of function have been discovered, if any.
- The Impartial Physician's report shall constitute prima facie evidence of the matters.

Impartial Examinations

- On January 15, 2013, the Department of Industrial Accidents increased the Impartial Medical Examination fees after a public hearing held on December 17, 2012. The new fees, pursuant to G. L. c 152, § 11A and 452 CMR 1.14, applied to all appeals of Conference Orders on or after January 17, 2013.
- Impartial Exam and Report \$650
- Second Exam, 8(4) \$650
- Supplemental Report \$200
- Records Review and Report \$300
- No Show Fee/Late Cancellation \$150
- Deposition Fee (First 2 hrs.) \$750
- Deposition Fee (2 hrs. +) \$150 per hour

Hearing

- The Hearing is a formal proceeding where the contested issues are heard *de novo*, under the Massachusetts Rules of Evidence and the prescribed DIA Regulations. The prerequisites are a timely appeal of the Conference Order and the report of the Impartial Physician.
- The Hearing is usually held before the same Administrative Judge who presided at the Conference and a court stenographer is assigned to record the Hearing.

Hearing

- The report of the Impartial Physician is central to the statutory system because it is prima facie evidence at Hearing, perhaps the only medical evidence.
- The Administrative Judge will review the report of the Impartial Physician and if the report answers all of the statutory requirements pursuant to Chapter 152, Sec. 11 A, the Administrative Judge must accept the report as the only medical evidence for the Hearing decision.

Hearing

- If one of the parties is able to convince the Administrative Judge, however, that the report is inadequate or that the medical issues are complex, the Administrative Judge may allow additional medical evidence that has evidentiary weight equal to that of the impartial report.
- The Administrative Judge's determination of this issue is very often the key to the outcome of the case.
- Due to the significance of that decision, some Administrative Judges will often discuss settlement potential with the parties prior to ruling on such a motion.

Hearing

- Administrative Judges encourage the parties to engage in realistic settlement discussions on the day of the Hearing as it is often a prime opportunity to resolve a case.
- On occasion, in order to facilitate a possible resolution to the claim, Administrative Judges offer a Pre-trial Conference session, prior to the date of Hearing.
- If the case proceeds to Hearing, the attorneys present testimony, from the employee and witnesses, in support of the claim and the defense.

Hearing

- The Hearing testimony is usually completed in one day followed by a period of time designated by the Administrative Judge within which counsel must complete medical depositions and if necessary, closing arguments or briefs on relevant legal issues.
- After the Hearing concludes, and all motions are ruled on and necessary depositions are filed, the Administrative Judge issues a formal Hearing Decision containing findings of facts and rulings of law.

Reviewing Board

- Any party aggrieved by the Hearing decision can request a review of the decision with the Reviewing Board, the appellate body of the DIA.
- The appeal must be received within thirty calendar days from the date of the Hearing decision with a Form 121, Appeal to the Reviewing Board. This form must be accompanied with a fee of thirty percent of state average weekly wage at the time of the appeal.
- The aggrieved party must show that the Hearing decision was beyond the scope of the Administrative Judge's authority, arbitrary or capricious or contrary to law.

Reviewing Board

- The Reviewing Board is comprised of Administrative Law Judges, three of whom will examine the Hearing transcripts. They may ask for additional written legal briefs or oral arguments from the parties.
- The Reviewing Board can reverse or uphold the decision of the Administrative Judge, or can remand the case to the Administrative Judge for further findings.
- Either party may appeal the Reviewing Board decision to the Court of Appeals within thirty days of the Review Board decision.