

# FAQ ABOUT WORKERS' COMPENSATION

## IN VERMONT & NEW HAMPSHIRE



## INJURED AT WORK IN VERMONT OR NEW HAMPSHIRE? SABBETH LAW CAN HELP

- ❖ Millions recovered for victims of work injuries. Work injuries can be devastating. Our team of worker's compensation lawyers has significant, relevant experience handling these types of cases.
- ❖ Our workers' compensation attorneys are experts in Personal Injury Law. We are constantly focused on continuing education and staying at the top of our field.
- ❖ We are ready to take your case to trial if necessary. You need an attorney that is trial-tested and who won't hesitate to file a lawsuit if the case demands it.
- ❖ Case reviews are free, and you won't pay out of pocket to hire us. If we take you on as a client, you won't pay anything unless we recover money for you.
- ❖ We will take the fight to the insurance company. After an injury, you need to focus on getting better. We know how to handle the insurance company, so let us fight for you.

Sabbeth Law's commitment is to secure full and fair compensation for our clients. To do that, our work has to be more than just a job.

# WORKERS' COMPENSATION FAQ

## WHAT IS WORKERS' COMPENSATION?

Workers' Compensation is an insurance or risk-based system designed to protect employees who are injured while working. The legal test as to whether an injury should be covered by workers' compensation is if the injury arose out of and in the course of employment.

There is a lot to know about workers' compensation. Often, the rules are exceedingly confusing, and the insurance companies that are well-versed in workers' compensation law will use their knowledge against the injured worker (who is already stressed by the injury or not being able to work) to take advantage of the injured worker and not offer the compensation and benefits due.

## BENEFITS DUE UNDER THE VERMONT AND NEW HAMPSHIRE WORKERS' COMPENSATION ACTS

If you have a workers' compensation claim, you are entitled to the following benefits in Vermont and New Hampshire:

### DISABILITY BENEFITS

If you are placed on work restrictions due to a work-related injury, and your employer cannot accommodate those restrictions, you are entitled to weekly benefits at your "compensation rate".

In Vermont workers' compensation cases, your compensation rate is  $\frac{2}{3}$ 's of your average weekly gross wage (of course, there are specific calculations and parameters to determine your average weekly wage).

In New Hampshire workers' compensation cases, your compensation rate is 60% of your average weekly gross wage (and, like in Vermont, there are specific calculations and parameters to determine your average weekly wage).





It is important to note that these are not necessarily hard and fast calculations. There are a number of variables specific to the client that can change the above equations, such as additions for dependents, cost of living increase adjustments, or an increase in percentage if your average weekly wage falls below a certain number. One of the first things we do with all new cases is to check to make sure that your compensation rate is for the right amount.

So, an example of the above that applies to Vermont and New Hampshire workers' compensation cases might go as follows: You're injured at work and your doctor says you cannot work for 4 weeks due to the injury. Let's say that your compensation rate is \$500. You would receive weekly checks of \$500 for that time you are out of work. This is called Temporary Total Disability (also known as "TTD") benefits.

Now, let's say that after four weeks you are allowed to return to work, but with restrictions. Unfortunately, your employer can only take you on for reduced hours due to your restrictions from your work injury, and you end up earning only \$250 per week due to the reduced hours. You would then be entitled to payment for an additional \$250 (to make you "whole" at your compensation rate of \$500) until you can get back to earning your normal wage. This is called Temporary Partial Disability benefits (also known as "TPD").

Finally, in Vermont workers' compensation cases, if you attain what's called "maximum medical improvement" (also known as "MMI" or "medical end") and your work restrictions have eased to where you're capable of "gainful employment," you are no longer entitled to temporary total disability benefits or temporary partial disability benefits. Maximum medical improvement is both a medical and legal term that means your recovery has gotten to a point where no further significant improvement can reasonably be expected. Essentially, it means that you have more or less plateaued in your recovery.

When you attain maximum medical improvement and have some work capacity in New Hampshire workers' compensation cases, you may still be entitled to temporary total or temporary partial disability benefits. However, the defendant's insurance company will likely move to have your compensation rate reduced to what is called the Diminished Earnings Capacity (or "DEC") rate. This is roughly 2/3's of your initial compensation rate.

As discussed in more depth below, you can imagine that many insurance companies are eager to get injured workers to their own hired doctors (referred to as "independent medical examiners," but more accurately known as "defense medical examiners"). The purpose is to get the injured worker placed at "maximum medical improvement" by doctors that are repeatedly hired by the insurance companies (many times, they don't actually treat people) so that the insurance company can stop paying disability benefits or pay a reduced rate.



## MEDICAL BENEFITS

In both Vermont and New Hampshire, the workers' compensation insurance company is required to pay for medical care, including surgical care, hospital services, remedial care, nursing, medications, and such other care as may be deemed reasonable, necessary, and related to the work injury. All of these costs should be covered in their entirety so that there are no copays or other bills that the worker is personally responsible for.

In addition, the injured worker is allowed reimbursement for mileage in traveling to and from these appointments at the IRS rate. Meals and lodging can also be covered depending on the circumstances.

As you might have guessed, the insurance companies are very quick to dispute what medical treatment is "reasonable, necessary, and related," and will often rely on their defense medical examiners to contradict your doctor's suggested treatment plan so that they don't have to pay.

## PERMANENT IMPAIRMENT

We spoke a little bit about "maximum medical improvement" (aka "MMI") above, which refers to when you reach a point, medically, where no further significant improvement can reasonably be expected. In other words, when your recovery has leveled off. Unfortunately, in most cases, when an injured worker gets to MMI, they often are not back to where they were prior to the injury. In Vermont and New Hampshire workers' compensation cases, the injured worker is entitled to be compensated for this difference, or "impairment."

## To try and illustrate this point, let's use numbers.

Using a scale of 0 to 10 (0 being the worst, 10 being the best), let's say that you were at a 10 prior to your injury. However, when you suffered your injury, you went down to a 5 at your worst. After a lot of long hard work and recovery, you get back to a 9 at which point you reached MMI. Well, you can see that you are now 10% below where you were prior to the injury. And, because you have reached MMI, you are not expected to significantly improve on that.

In this case, whether your work comp case is in Vermont or New Hampshire, a doctor should evaluate you for an impairment rating utilizing the *AMA Guides to the Evaluation of Permanent Impairment, 5th Ed.* Preferably, your treating physician would do the impairment rating; but, if he or she is not trained to do so, a doctor who is trained to do impairment ratings using the Guides would. Based on your impairment (utilizing your impairment rating, your compensation rate, and other variables), you would be entitled to some amount of money based on your impairment.

The tricky part here is that the insurance company will almost always send you to a defense medical examiner that it chooses and pays for, and the defense medical examiner will almost always do everything he or she can to give you the lowest impairment rating possible instead of the most accurate impairment rating possible. We combat that scheme on a regular basis, as discussed more below.

## VOCATIONAL REHABILITATION BENEFITS

Too often, injured workers are unable to return to the type of work they've done their whole lives due to medical restrictions from their injury. If an employer is unable to take you back because of your restrictions in a Vermont or New Hampshire workers' compensation case, you will likely be entitled to vocational rehabilitation.

Vocational rehabilitation is a program that trains injured workers to become viable employees in a new field that the employee is interested in. That job should also pay similar to the job the employee was working at the time of his or her injury.

For example, if you're a truck driver and sustain a severe left ankle fracture, you probably will not ever be cleared to go back to driving tractor-trailers and the heavy clutching required to safely operate a semi. So, the workers' compensation insurance company would be required to pay for your retraining in a new field of employment where you can make similar pay. You might look to train to be a surveyor or any number of other professions you're interested in and that have a viable job market. Depending on your background, the training might involve computer classes or field training or require that supplies be provided to you.

We work closely with our clients and their vocational rehabilitation counselors to ensure that the process runs smoothly and fairly, and puts our clients in the best possible position to succeed and rejoin the workforce if at all possible.





## COMMON BOGUS DENIALS OF WORKERS' COMPENSATION CLAIMS

Again, workers' compensation in Vermont and New Hampshire could not be more simple: if your injury arises out of and in the course of your employment, you're covered. However, we cannot begin to count the number of times I've had injured Vermont and New Hampshire workers come to our firm with patently absurd and insulting denials of their work comp claims. Sure, there are some claims that are legally and factually more complex than others — we litigate those claims on a daily basis. But it's what I refer to as "bogus denials" that I see most often and find most infuriating. And it often starts at the very beginning.

“ YOU DIDN'T REPORT IT RIGHT AWAY,  
SO IT DIDN'T HAPPEN.

### It's easiest to illustrate this denial by example:

It's Monday, July 1st and you report to work. After you've arrived at the office or the worksite, you're moving an item and lose your balance. You begin to fall, but catch the item you're moving. In fact, you don't even fall, but you twist yourself. Before you know it, you feel a painful sensation radiating from your neck down your shoulder and into your arm. Because, like most of us, you just want to get on with it, you don't say anything to any of your coworkers, but simply finish out the workday and head home. Maybe you take an Advil to get you to the finish line.

Throughout the evening and into the following day, you notice this pain begins to worsen. The next day you report to work and you're sore. You realize that your injury is getting worse; but, again, you want to get on with it, finish your shift and get home. And so you do. We've all been sore before. You figure you'll be fine the next day.

When you awake the next day the pain is still there, and finally, it dawns on you: You better get to the doctor to get checked out.

**Bad news:** Your doctor breaks it to you that you're out of work and require additional medical treatment.

You call work, tell them what happened, and they pass the info along to their workers' compensation insurance company. The conversation turns from here:

**Insurance company:** "When was the injury reported?"

**Your employer:** "Today."

**Insurance company:** "But your employee claims it happened two days ago?"

**Your employer:** "Yep."

**Insurance Company:** "But, to be clear, your employee is reporting it for the first time today?"

**Your employer:** "Yep."

**Insurance Company:** "Did anyone see him get injured?"

**Your employer:** "Nope."

**Insurance Company:** (without further inquiry) "Thank you, we will be denying the claim."

**Your Employer:** "Okay."

Now you have no income. You have no access to medical care outside your personal health plan (if you have one) and the deductibles and copays that accompany it. You have no job security. The system you've supported as an employee since you began working has tossed you by the wayside.



PREEXISTING CONDITION.  
WE'RE NOT RESPONSIBLE.

You've been working for years. Like most people over the age of 30, you have some degeneration/arthritis in your joints. For this example, let's say it's specifically in your shoulder.

You're lifting boxes for work, and you're suddenly struck with a sharp, biting pain in your shoulder. It's severe, and you know you didn't just pull something — you know you're injured.





**You do all the right things:** you immediately report the injury to your supervisor or coworker, explain how it happened, and go to the emergency room. The hospital performs an MRI which shows multiple rotator cuff tears, which clearly started before your work injury. However, you never had symptoms remotely close to what you are now experiencing before the work injury. That last box you moved was the proverbial “straw that broke the camel’s back.”

The insurance company receives your medical records showing that there was some preexisting tearing. Bang! Claim denied.

Again, the law of Vermont and New Hampshire workers' compensation is clear: Even when there is some underlying or pre-existing degeneration, if you sustain an injury at work that “breaks the camel’s back” and causes symptoms requiring treatment, it is covered.

There's a very clear logic behind this law. Again, anyone over 30 years old almost definitely has some degenerative conditions. But it doesn't mean we're injured or inhibited from doing our job. Once you become injured, and it relates to the degenerative condition...well, no such injury would ever be covered if this safeguard didn't exist. Insurance companies could always point to some underlying but meaningless condition. This is not allowed under Vermont and New Hampshire workers' compensation law because it doesn't make sense. The insurance companies know this, but they know you probably don't. So they exploit this knowledge to issue a bogus denial, knowing you probably will never be the wiser. I see these denials in Vermont and New Hampshire workers' compensation cases tens of times per year. Like other “bogus denials” we quickly get up to challenge and win these disputes.

## REPETITIVE MOTION INJURIES

Repetitive Motion Work Injuries (work injuries that occur over time as a result of repetitive motions necessary at work) are prime targets for wrongful denials in Vermont workers' compensation cases. The argument is that you can't prove the injury is related to your work duties. Well, if it's not related, you can't; but even when it clearly is related, it is denied anyway.

Again, a real-life example (with changes to protect anonymity) that reflects countless cases we have litigated:

John Doe works in an assembly factory putting together widgets requiring more or less the same repetitive motions over a prolonged period of time. Throughout this time, John has experienced increasing pain, tingling, and numbness from his elbow into his pinky. He notices increased difficulty doing his work and doing stuff at home, such as grabbing milk out of the fridge. He goes to the doctor.

**Important side-note (as touched on above):** Like all truly independent doctors, John's personal physician has no "skin in the game." In other words, it makes no difference to him whether Mr. Doe's injury is work-related or not. He doesn't benefit from the source of the injury. He's a practitioner that treats patients — he does not work for insurance companies. His only job and motivation are to diagnose the injury and make his patients better, whatever the source of the injury.

After an exhaustive examination, John's doctor diagnoses his injury as severely inflamed tendonitis, and concludes, without question, that John's injury is a direct result of the repetitive motion work he does for his employer.

However, the insurance company denies the claim anyway as "unrelated," and ushers you off to see one of its defense medical examiners that it uses time and again. The defense medical examiner will almost certainly state that Mr. Doe's injury is unrelated to his work. They will find any excuse for the cause of the injury other than the obvious one. And the denial will remain in place pending battle. I rarely cease to be amazed by how little care is put into the denial when these are brought to me. And so we fight.

“ IT DIDN'T HAPPEN AT HOME BASE.  
WE'RE NOT RESPONSIBLE.

Many people throughout Vermont have jobs that require them to travel. For example, house painters and other contractors will often meet at a warehouse or some other type of headquarters before heading to the job site where the work is to be done. In most cases, if you're involved in a motor vehicle accident to or from one of these jobs, it will be covered by workers' compensation.

Likewise, if your job requires you to deliver or transport materials to job sites and you are injured in a collision during one of those trips, you would also be covered by workers' compensation (in addition to any potential claim against a negligent party that caused the collision). Regardless of whether you or the other driver was at fault, you would most likely be covered under workers' compensation.

There are countless other examples of travel that would be covered if you're involved in an accident and are injured. The employer or insurance company rarely offers or even knows that you're entitled to work comp benefits under these circumstances. My clients are often surprised to learn that they are.

## DO I NEED A LAWYER IF MY CLAIM HASN'T BEEN DENIED?

Almost every ongoing workers' compensation case we've evaluated – even just as favors for family and friends – has displayed inadequate compensation as required by the Work Comp Acts. For example, we have had people bring proposed settlements to us for review just before signing them, and we almost always find significant omissions amounting to thousands of dollars. Some of them are obviously incorrect impairment ratings by some of the usual culprits (many times no impairment rating has been done at all!). Oftentimes, huge portions of disability benefits haven't been paid, and medical bills remain open because the company simply didn't bother to pay them or erroneously argued they were unrelated. Vocational Rehabilitation hasn't been offered when required. Most importantly, the insurance company fails to make a proper accounting of future medical expenses, and when the settlement is signed, the employee has no other recourse.

If your claim is open and being adjusted, have a workers' compensation attorney review it. At Sabbeth Law we offer free analysis and consultations. Hopefully, all is well and you can check back in with us as you see fit. The value of peace of mind in learning your claim is going properly, or, alternatively, catching issues before the horse is all the way out of the barn and running amok, is well worth your time and is free.

We specialize in workers' compensation cases throughout Vermont and New Hampshire. If you would like to discuss your case or potential claim, call us at (802)457-1112. We will be more than happy to speak with you free of charge. If we do not take your case, we will do our best to give you direction.