

A close-up photograph of a hand wearing a purple nitrile glove, firmly gripping a wooden cane. The cane is light-colored wood with several dark screws or rivets along its length. The background is a plain, light-colored wall.

The Employee's Guide to Injury Management

MEMIC

Summary Page

1. Your employer has workers' compensation insurance with Maine Employers' Mutual Insurance Company (MEMIC).

2. Work-Related Injuries are injuries that occur at work because of activities you perform in your job.

3. You should notify your employer as soon as possible of any work-related injury you believe you have sustained. **You have 30 days to give your employer notice of the injury.**

4. Benefits are payable for medical expenses that are incurred as a result of your work-related injury and loss of pay for more than seven days of disability.

5. Your employer may refer you to a doctor for the first ten days of treatment. After the first ten days, if you require additional medical care, you may choose a different medical care provider but must notify your employer of the change.

6. Benefits available under the Workers' Compensation Act include the following:

Weekly benefits based on 2/3 of your gross average weekly wage. Such benefits can be for total or partial incapacity depending on your ability to work.

Medical costs are paid for treatment you need as a result of the work-related injury. Besides office visits and hospital expenses, these medical costs can include prescription drugs, physical aids such as crutches, specialist care, etc. You will also be reimbursed for mileage expenses (at rate set by the Maine Workers' Compensation Board) for travel related to obtaining medical care.

Employment rehabilitation, which may include retraining and job placement, are available if the work-related injury you sustain is so severe

as to prevent you from returning to your regular employment.

7. Once your employer has notice of your claim for workers' compensation benefits, MEMIC has 14 days to make a decision on whether to accept or dispute your claim.

8. During the period your claim remains denied, you have the right to claim any disability plan or medical payment plan that you have available. We suggest you provide your disability and/or health insurance carrier with a copy of our **Notice of Controversy** when you file a claim for benefits.

A Troubleshooter from the Workers' Compensation Board will contact you, and MEMIC to help with the exchange of information regarding your injury.

A Mediator from the Workers' Compensation Board will schedule a meeting to sit down with you and a representative of MEMIC to try to get the parties to resolve their differences. An advocate will be appointed to help you with this process.

A Hearing Officer will conduct a formal hearing and issue a written decision which is binding on the parties, absent any appeal.

9. Your employer and MEMIC will work with you in your efforts to recover from your injury and return to work. MEMIC has a team of nurse case managers who will monitor your medical progress. Based on the advice of your treating physicians, suitable modifications to your job or a temporary placement in a light-duty work program may be recommended until such time as you regain your full work capacity. Open communication and cooperation among all the parties involved with your claim are the key elements to achieving the best results for recovery.

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Introduction

Maine Employers' Mutual Insurance Company (MEMIC) believes in “the social contract” between employers and employees. That “contract” suggests that employers are responsible for providing a safe workplace and fair wage. The employees' responsibility is to work safely and provide the employer with a productive day's work. The “social contract” also implies that if an injury occurs in the course of work, the injured person should promptly report the injury to the employer, and begin the process of recovery and return to work. The employer is obligated to work with the employee until the injured employee is able to return to work.

Your employer has workers' compensation insurance from MEMIC to pay benefits for injuries that are work-related. This guide is designed to give you some basic information about the workers' compensation system in Maine and the benefits to which you may be entitled. You and your employer share the goal of preventing injuries at work. Your employer should work consistently with you to prevent injuries from occurring. In some cases, despite all efforts to the contrary, an injury may occur which will cause you to lose time from work and will require medical attention.

MEMIC prides itself on a prompt and courteous response to any questions you may have concerning your claim. If there is any time at which you believe you have not been treated well by a representative of our company, you are invited to contact the unit manager for that representative at 1-800-660-1306.

Finally, this unwritten “social contract” assumes that neither the employer nor employee will take unfair advantage of one another or the workers' compensation system—something you, your company, and the economy of Maine cannot afford.

1. What is a work-related injury?

Although workers' compensation is a "no-fault" system, there are various requirements you must satisfy in order to be eligible for benefits. The first question that will be asked about your injury is whether or not it is related to your work duties. In other words, "Did work duties put you at a greater risk for injury?" There are two steps to finding the answer to this question: you must show that your injury (1) occurred during your workday hours and (2) was caused by activities which you are required to perform as part of your job. Generally speaking, answering whether or not your injury occurred during your workday hours should not be difficult.

EXAMPLE:

An injury resulting from a car accident on your way to work is not a work-related injury because it did not occur during the hours of your employment, and commuting to, or from, work is not part of your job. There are exceptions to this situation, but the example is generally true.

The second part of the question—whether your injury was caused by activities you engaged in at work—is a little more complex and will often require medical reports from doctors and other health care providers who can explain what impact, if any, your work activities had in causing your injury. In fact, medical reports about your injury are so important that decisions regarding acceptance of your claim and paying workers' compensation benefits to you may be delayed until Maine Employers' Mutual receives such information.

EXAMPLE:

Suppose you have a heart attack at work during your workday hours. Medically speaking, the heart attack may not be associated with your work activities. The medical reports might show that the heart attack was caused by general health problems and would have occurred regardless of where you happened to be at the time. Even though it occurred at work, such an injury would **not** be considered work-related.

2. What should I do if I think I have sustained a work-related injury?

If you have a work-related injury, there are a couple of things you must do to make sure that you receive the benefits to which you're entitled. **First, immediately report the injury to your supervisor.** This is known as giving "notice" to your employer. In some cases your supervisor will already know about your injury. **For example,** your supervisor may witness you fall off a ladder. **If you have any doubt** as to whether or not your supervisor is aware of your injury, or that the injury required you to receive medical attention and/or lose time from work, **notify your supervisor immediately.**

EXAMPLE:

Your supervisor witnesses you fall off a ladder. Although you are stunned for a few moments, you go right back to work without seeking any medical attention. Two weeks later you begin to have pain in your shoulder. You think the pain in your shoulder is related to the fall from the ladder two weeks earlier. You should notify your supervisor of your shoulder pain and of your belief that it is related to the fall. Do not assume that your supervisor will make this connection.

You must tell your supervisor about your injury within 30 days of the injury. This early notice of your injury allows your employer, not only to promptly respond to your claim for benefits, but also to take steps to prevent any additional injuries from occurring to you and your co-workers. Failure to give notice within 30 days can prevent you from receiving benefits.

The second deadline you should be aware of is the Statute of Limitations that exists for filing a petition with the Workers' Compensation Board. If your claim is disputed and no benefits are paid, you will have two years from the date of your injury in which to file a petition in order to bring your claim to the Workers' Compensation Board for a decision. On the other hand, if your claim is accepted and workers' compensation payments are made, you will have six years from the date of the last payment you receive in which to file a petition requesting additional benefits. In other words, if payments are made to you for a fixed period of time, your claim is not considered completely closed until six years from the last payment. Every time workers' compensation benefits are paid to you, the statute of limitations is extended six years.

3. What benefits are paid by workers' compensation insurance?

The following is an outline of the benefits that are available under the Workers' Compensation Act. Maine Employers' Mutual Insurance Company invites you to contact the person handling your benefits for additional information or explanation.

A. Weekly Compensation Benefits (also known as indemnity payments).

1. Waiting Period

You must be out of work for more than seven days before you are eligible to receive weekly compensation benefits for loss of earnings. You will be eligible for payment of compensation for the seven days of lost earnings during this waiting period only if you remain out of work for more than 14 days.

Examples:

- a. You have a work-related injury that causes you to lose five days from work. Because of the seven-day waiting period you will not be eligible for weekly compensation benefits; however, you will be eligible for payment of medical expenses related to your work injury. (See Page 9)
- b. You have a work-related injury that causes you to lose 12 days of work. You will be paid weekly compensation benefits for five days. This would be calculated as follows:

$$12 \text{ days} - 7 \text{ day waiting period} = 5 \text{ days.}$$

- c. You have a work-related injury that causes you to lose 60 days from work. You will be paid weekly compensation for all 60 days because your period of incapacity was more than 14 days.

2. Average Weekly Wage

The first step in calculating the weekly benefits to be paid to you is the calculation of your average weekly wage. The general rule for calculating an average weekly wage is to add your gross earnings for the 52 weeks prior to your injury and divide that sum by 52. There are rules which address special circumstances, such as: if you have not worked in your current job for 200 work days, you are paid on a piecework basis, or if you are a seasonal worker. In some cases, the value of the fringe benefits paid to you by your employer may be used in calculating your average weekly wage; provided such fringe benefits are not continued during your absence from work.

The second step is to calculate your gross average weekly wage. This second step involves an examination

3. What benefits are paid by workers' compensation insurance?

Continued

pay information provided by your employer which outlines your compensation package.

The third and final step is to calculate $\frac{2}{3}$ of the gross average weekly wage. This final figure is the amount of your weekly benefit **if you are unable to work at all**. You are considered totally incapacitated when you are unable to perform gainful work in the ordinary competitive labor market in the state.

The maximum weekly compensation payment is currently \$728.63.

3. Total vs. Partial Weekly Benefits

If you are totally unable to work, you will receive weekly benefits for total incapacity equal to $\frac{2}{3}$ of your gross average weekly wage. There are some injuries for which the Workers' Compensation Act presumes a specific period of incapacity. **For example**, if you lose a thumb as a result of a work injury, the Workers' Compensation Act presumes that you will be totally incapacitated for 65 weeks. However, in most cases, the issue of when you are able to return to work will be based on the opinions of the doctors who are treating and examining you.

If you regain some capacity to work, your benefits for total incapacity will end; however, you may then become eligible for partial incapacity benefits. Partial incapacity benefits are calculated based on a comparison of your earnings before your injury and your earnings after the injury. Partial incapacity benefits are normally not paid for more than 260 weeks, although, exceptions to this rule exist if you have sustained a major injury resulting in significant permanent loss of function to your body.

EXAMPLE:

Your gross pay was \$350 per week before your injury. Your compensation rate for total incapacity would be \$233.33. If you returned to a part-time job grossing \$175 per week, you would be entitled to \$116.66 per week in partial compensation. These calculations are taken directly from a table prepared and distributed by the Workers' Compensation Board and are based on your wages.

3. What benefits are paid by workers' compensation insurance?

Continued

B. Medical Care and Expenses

All reasonable and proper medical expenses for treatment of your work-related injury will be paid. In some cases you may only have medical expenses as a result of your injury and you will not lose any time from work. This is known as a "Medical Only Claim."

Health care providers include physicians, osteopaths, chiropractors, and podiatrists. In addition, health care expenses may include prescription medicines (generic drugs when possible), and physical aids such as artificial limbs, eyeglasses, and hearing aids. A prescription card may be issued to you in an effort to help you avoid out-of-pocket expenses. You will also be reimbursed at the rate approved by the WCB for travel expenses associated with obtaining medical care. It is your responsibility to keep track of your mileage for visits to the doctor.

You should note that if MEMIC makes payment for a certain type of medical care, that does not indicate that we will continue to make payments for the same type of treatment indefinitely. **For example**, you may choose to obtain treatment from various medical practitioners (see page 11: *Choosing a Doctor*). MEMIC may be willing to pay for such care in the hope that it will make you better. There may come a point, however, when MEMIC will stop making payment because it does not believe such care continues to be reasonable or proper. In the event this occurs, you will have to prove that such care is reasonable and proper to be able to continue having your medical bills paid.

You should also note that the Workers' Compensation Board maintains a **Medical Fee Schedule** that provides for the maximum reimbursement that will be allowed for any medical service. **For example**, the Medical Fee Schedule may set \$500 as the maximum amount that can be charged for arthroscopic surgery on your knee. MEMIC will not pay more than the maximum set by the Medical Fee Schedule. **In addition, the doctor treating you cannot charge you for any amount above that authorized by the Medical Fee Schedule for any treatment for your work-related injury, nor can he refuse to treat you in the future for a non-related condition solely because he was not reimbursed for the full amount charged.**

C. Disputes and Attorney's Fees

If you, your employer, or MEMIC disputes the degree of your disability or the level of benefits being paid, a **Notice of Controversy** or a **21-Day Suspension/Reduction** must be filed with the Workers' Compensation Board (see page 13). Although attorneys are sometimes involved in the formal hearing process (see below), you should note that only a small percentage of disputed cases require a formal hearing to resolve a claim. You are entitled to consult an attorney at any stage of your claim. However, **if you were injured on or after January 1, 1993, you are responsible for paying your own attorney's fees.** Your attorney may ask you

3. What benefits are paid by workers' compensation insurance?

Continued

to sign an agreement in which you agree to pay the attorney a percentage of the workers' compensation benefits that the attorney is successful in obtaining for you.

The Workers' Compensation Act has established an advocate program designed to assist employees who are not represented by an attorney and need assistance. This is a free service provided by the Workers' Compensation Board.

An attorney is not required in every case. The majority of cases are resolved informally either through the efforts of a troubleshooter, advocate, or a mediator of the Workers' Compensation Board. This troubleshooting and mediation process (pages 13-15), greatly simplifies the dispute resolution process so that the average injured worker can: work through the system on his or her own, is given the information needed to understand why the claim is being disputed, and know what steps need to be taken to bring an end to the dispute.

MEMIC neither encourages nor discourages involvement of attorneys and/or advocates. Each case is unique and the decision as to whether or not, and at what stage, an attorney and/or advocate would be helpful in resolving your claim, is one for you to decide.

4. What happens after I tell my employer about my injury?

A. First Report of Injury & Choosing a Doctor

One of the first decisions that will be made by your employer and MEMIC concerning your claim will be to accept or dispute your claim. MEMIC will request information in order to make this decision. Once you have given your employer notice of your injury, your employer will ask you questions about how the injury occurred and will then fill out a written report known as the **“First Report of Injury”**. The First Report of Injury will be completed by your employer to notify MEMIC of the injury. MEMIC will mail copies to you, your employer, and the Workers’ Compensation Board.

Your employer may then direct you to be treated by a medical provider. Under the Workers’ Compensation Act, your employer is allowed to choose the doctor who will treat you for the first ten days after an injury. In many cases, the selection of who this doctor will be is a decision made by you and your employer together as part of a company-wide managed healthcare program.

After ten days of treatment with this doctor, you will have an opportunity to change medical providers **only if you notify your employer or insurer that you intend to make this change**. If you elect to begin treatment with a doctor of your choice, **you can only change doctors one more time after that**. You should note that even after you have elected to obtain treatment from a doctor of your own choice, **your employer still has a right to schedule an examination with a doctor of his or her choice** in order to obtain information concerning your medical condition.

B. Medical Information

A representative of MEMIC will contact you within 24 hours of receiving the First Report of Injury. MEMIC will want to obtain copies of reports about the medical care you are receiving for your injury. In fact, your claim may be disputed until MEMIC receives such information. This may happen because MEMIC has only 14 days to decide whether to accept or dispute your claim. Obviously, if medical information relevant to your claim is missing, the company will dispute your claim awaiting such information.

You may be wondering, “How do I get the doctor to send medical reports to MEMIC?” This will happen in a couple of ways. First, it will in part happen automatically once the doctor knows you are seeking treatment for a work-related injury. Once the doctor knows this, the doctor has an obligation to complete a written report within five days and send a copy of this report to your employer and MEMIC. The doctor will be asked to give an opinion in this report as to whether or not the injury for which you are obtaining treatment is caused by your work activities.

4. What happens after I tell my employer about my injury? Continued

Secondly, medical information regarding your injury will be obtained through the use of a form known as an “**Authorization for Release of Medical Information.**” MEMIC will send you this form and ask you to sign and return it to them. Your signature on this form authorizes any doctor to release medical reports that are related to your claim for workers’ compensation.

As noted earlier, MEMIC has 14 days to decide whether or not to accept or dispute your claim. If your claim is accepted, payments will be made to you and a written form will be filed documenting this payment. This form is called a **Memorandum of Payment.**

5. How will I know if my claim is accepted or disputed?

If your claim is disputed, payments will not be made and you will have to decide whether or not you will continue to pursue benefits. You will receive a form known as a **Notice of Controversy** from MEMIC. MEMIC will indicate on the Notice of Controversy the reason(s) it is disputing your claim for benefits. A copy of the Notice of Controversy will also be sent to your employer and the Workers' Compensation Board. The Workers' Compensation Board has three steps for resolving disputes: (1) Troubleshooting, (2) Mediation, and (3) Formal Hearings. The dispute can be resolved at any stage of this three-tier process.

Troubleshooters

Besides being contacted by a representative of MEMIC, you will also hear from a person at the Workers' Compensation Board known as a **Troubleshooter**. The Troubleshooter will answer any questions you may have and will also provide you with some basic information about the workers' compensation system. The Troubleshooter will also contact MEMIC and make some effort to bring an end to the dispute before a mediation. Your conversations with the Troubleshooter, combined with your MEMIC contacts, should give you a good idea about why your claim is being disputed and what information may be necessary to bring an end to the dispute. If the Troubleshooter believes that the dispute is not going to be resolved informally by an exchange of information, the Troubleshooter will refer the matter for mediation.

Mediation

Mediation is conducted by a **Mediator** of the Workers' Compensation Board. Unlike the Troubleshooter, who generally communicates with the parties by telephone and letter, the mediator will schedule a specific time to sit down with you, your advocate, your employer, and a representative of MEMIC to attempt to resolve the dispute. This mediation will be held at the regional office of the Workers' Compensation Board closest to your home. The Workers' Compensation Board has regional offices in Portland, Lewiston, Augusta, Bangor, and Caribou.

MEMIC will indicate the reason your claim is being denied on the Notice of Controversy. You should be prepared to discuss these issues at the mediation. If you do not understand the information contained on the Notice of Controversy, you should call MEMIC and ask the representative working on your claim to explain the issues in dispute and the information that may be necessary to resolve the disputes.

Before mediation, the Workers' Compensation Board will offer you the services of an advocate. If you desire this assistance, please contact the appropriate advocate before the date of your mediation. Generally, the mediator will ask you to describe your injury, the medical care you have received as a result of your injury, and the time you have lost from work. You may also be asked to describe what you believe are your

5. How will I know if my claim is accepted or disputed?

Continued

present limitations. You are not expected to be familiar with the Workers' Compensation Act in great detail. **Generally speaking, your responsibilities at mediation are: (1) to describe your work activities and your injury and (2) to bring with you all the medical reports available that are related to your claim.** You should not confuse this presentation of your claim with "testimony" such as that given at a formal hearing. Mediation consists of three or four people discussing your claim for workers' compensation benefits and trying to reach an agreement concerning any disputes about your claim without having to go on to a formal hearing.

There are times when mediation will eliminate some, but not all, the issues that are being disputed. **For example,** mediation may result in MEMIC agreeing that you had a work-related injury, but there may still be a dispute concerning your average weekly wage, or the degree of your incapacity. If it appears that the parties are in deadlock with regard to a particular issue, the mediator may suggest some type of compromise. The mediation process is designed to allow such compromise and flexibility. You should note, however, that if you believe you are legally entitled to more benefits, you can reject the proposal and pursue additional benefits by filing a petition to have your claim heard by a Hearing Officer. This is when an advocate can be of great assistance in providing guidance.

At the end of the mediation the mediator will complete a **Mediation Report** which all the parties attending the mediation are required to sign. The Mediation Report will indicate what issues have been resolved and what issues are still in dispute. Essentially, the Mediation Report serves to document the events that took place at the mediation. Unfortunately, sometimes all the issues remain disputed despite the best efforts of all parties. Those issues that are still in dispute will be referred to a **Hearing Officer** from the Workers' Compensation Board upon the filing of a petition.

Hearing Officers and Formal Hearings

At the formal hearing you may be represented by an attorney or an advocate. Hearing Officers conduct "formal" hearings to resolve the small percentage of claims for workers' compensation benefits in which a dispute arises that cannot be resolved by either the Troubleshooter or the Mediator. In most cases, you will be asked to testify before the Hearing Officer. The Hearing Officer will also hear testimony of other witnesses, including testimony of physicians, and will review written medical reports and any other evidence presented by the parties involved which the Hearing Officer believes is reliable and useful in making a decision. The Hearing Officer, upon a review of all the evidence, will issue a written decision which will be binding. If you are unhappy with a decision of the Hearing Officer, you may file an appeal to the Supreme Judicial Court of Maine. Similarly, an appeal can be filed by the employer or MEMIC if either feels the Hearing Officer's decision is in error.

5. How will I know if my claim is accepted or disputed?

Continued

Regardless of whether benefits are paid to you voluntarily by MEMIC or following troubleshooting or mediation, or are paid as a result of a decision of the Hearing Officer following a formal hearing, you have an obligation to continue to keep in touch with your employer and to advise your employer of any change in your condition.

6. What are my obligations once I begin to receive workers' compensation benefits?

Your employer will make every effort to bring you back to work as soon as possible and to make “reasonable accommodation” for your return. You, in turn, have an obligation to accept employment that you are physically able to perform. In some cases, your return to work may require modifications to the job you previously performed. In other cases, when your restrictions are more severe, you may be placed in a “light duty” position until you regain your ability to perform your former job. Unfortunately, there are some cases in which the employer, despite all his efforts, will not have work to accommodate your restrictions. In such cases you may have an obligation to begin looking for work with a new employer. If you are unable to return to work with your regular employer, but begin working with a new employer, the Workers' Compensation Act requires that you report your return to work within seven days of such an event. You will then be required to file quarterly reports of your earnings in your new employment. Such earnings must be reported because weekly wage replacement compensation benefits can be reduced by any earnings you are paid as you begin to recover from your injury. You should also note that income you receive in the form of unemployment benefits, social security benefits, and employer-funded pension and disability plans may also cause your weekly workers' compensation benefits to be reduced. In general, the law does not allow “double dipping.”

If you recover from your injury, either in part or in whole, and you fail to make a good-faith effort to return to work, MEMIC may attempt to reduce or suspend your weekly compensation benefits. You would receive written notice from MEMIC at the time it takes steps to reduce or suspend your benefits.

The workers' compensation system works best when there is open communication between you, your employer and MEMIC. MEMIC is committed to acting in good faith at every stage of your claim to ensure that you get the assistance you need to recover from the effects of your work-related injury. The prompt reporting of injuries allows your employer and MEMIC to respond effectively to your claim. When you have regained your full work capacity and return to work following your recovery period, the system has worked successfully, and everyone wins.

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