



Law Offices

Robert E. Wisniewski

**“Justice for the injured worker”**

Arizona Workers' Compensation Certified Specialist



# Arizona

# Workers' Compensation Guide

## Claiming and collecting benefits

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ROBERT E. WISNIEWSKI**

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**ARIZONA  
WORKERS' COMPENSATION  
GUIDE™**

Claiming and Collecting Benefits  
For Arizona Workplace Injuries



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**Hurt on the Job? Call Bob!**  
**1-800-224-3220 (Toll Free in Arizona)**

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YUMA, PAYSON/GILA COUNTY,  
KINGMAN (MOHAVE COUNTY) AND FLAGSTAFF/PINETOP**

Disclaimer

This Arizona workers' compensation guide is not intended to serve as a replacement for legal counsel or representation. The Law Offices of Robert E. Wisniewski, an Arizona workers' compensation firm, represents injured workers across Arizona and provides this complimentary guide as an educational resource for its website viewers and prospective clients.

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## Reporting an Injury and Obtaining Benefits

### **Effectively navigating the workers' comp system helps you obtain the needed benefits to treat your injuries and compensate you for lost wages and disability**

We don't go to our jobs day in and day out thinking about what we would do in the event of an injury – we're too busy thinking about our lives and other pursuits. If an on-the-job injury does occur and requires medical attention and maybe even time off, it is our sincere hope that our employers will understand and help us get back to normal as soon as possible.

But reality is a much different story that can prove frustrating for injured workers. Dealing with your employer's insurer can be a cumbersome process without the proper knowledge and/or representation. Many good working relationships have fallen victim to this process.

Fundamentally speaking, your employer and their Arizona workers' compensation insurer are businesses who have a variety of obligations and needs to meet. Your employer will try to minimize risks associated with workplace injuries, which sometimes doesn't work to your benefit.

While it's not the optimal situation, you may have no choice but to engage your employer and their insurer in the legal system. In the end, you cannot allow yourself to be left holding the bag for an injury that occurred in the course of your employment.

### **What do I do if I'm injured on-the-job?**

Each year, thousands of workers' compensation claims are filed in Arizona. If you're one of them, this guide is designed to serve as a one-stop resource for helping you navigate the system. It is not intended to replace legal representation but rather, serve as an easy-to-use guide for helping you understand your employer's obligations and the basic process of going about obtaining your rightful benefits.

### **Continue reading to learn more about what you should do if you're injured on-the-job**

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## Reporting an On-the-Job Injury And Obtaining Care

### What should I do if I'm injured on-the-job?

Getting injured is an unfortunate fact of life but if something happens during the course of your employment, there are certain steps you need to follow to ensure you receive all of the Arizona workers' compensation benefits you're entitled to.

NOT FOLLOWING THE PROCEDURES OUTLINED BELOW  
COULD PUT YOUR BENEFITS AT RISK!

First of all – if your injuries are threatening to life and/or limb, seek medical attention immediately and then notify your employer in writing.

### Reporting your Injury

If your injuries are NOT life or limb threatening, verbally notify your supervisor and ask if there are any internal accident reporting forms you need to complete. You are also required to notify your employer forthwith, meaning as soon as practicable.

Even if your employer says written notification isn't necessary,  
do it anyway and keep a copy for your records.

If your supervisor doesn't accept written notification,  
go to their supervisor or your company's human resources department.

Include the following on your brief written statement:

- How the injury occurred
- When the injury occurred
- Where the injury occurred...and
- What body parts were affected – list all you think were injured

Your statement only needs to be short – just enough to provide a few specifics of your injury.

In addition to reporting your injury to your employer, you will also need to file a claim with the Industrial Commission of Arizona (ICA) within, in most instances, one year of your injury. **BUT report forthwith** (soon) to your employer.

### Designating a physician (employer)

Once you report your non-life or limb threatening injury to your employer IN WRITING, request medical care.

If you're not in your usual workplace and are injured, you can seek necessary medical treatment immediately.

If your injuries are life or limb threatening, seek emergency medical attention immediately. Once emergency care is no longer required, you can select your physician of choice (unless employer is self-insured).

### **What if my injury occurred over a period of time and not as a result of a specific event – gradual injury?**

Injuries like carpal tunnel or thoracic outlet syndrome occur over a period of time rather than from a specific event. If performing your job causes a chronic ailment that prevents you from fully performing your job, you may have an occupational disease.

If you have a condition like carpal tunnel syndrome or some other occupational disease, you are entitled to the same benefits as someone who is injured from a **specific** accident.

Unlike injuries where the time for reporting or filing a claim begins at the date of the accident, gradual injuries and occupational diseases begin when you knew or should have known you had a medical condition caused by a work-related action.

Therefore, once you know you have an occupational disease that was caused by your job, report it to your employer so you can obtain treatment. Beyond that, the workers' compensation process pretty much works like detailed above.

Reporting your injury is only the first step in ensuring you obtain the full amount of medical and wage loss benefits afforded to you under Arizona law.

## **Workplace Injuries Involving Pre-Existing Conditions**

### **What if my injury at work caused a pre-existing condition to reappear or get worse?**

Some workplace injuries do not simply create new conditions, they exacerbate other pre-existing ones. Prior back pain, bad knees can come back out of nowhere if you sustain a slip, fall or some other calamity while at work.

Fortunately in most cases, pre-existing conditions are covered under Arizona workers' compensation if a workplace injury aggravated the condition and caused you to seek additional or new treatment.

Unfortunately though, some employers try and deny coverage for pre-existing conditions and contend that since the condition was already a problem, it shouldn't be covered under the workers' comp claim.

But if a pre-existing condition was aggravated or caused to re-appear as a result of a workplace accident, it's covered under workers' comp statutes in Arizona.

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## **Some ideas to consider when thinking about pre-existing conditions and workplace injuries**

- Was your pre-existing condition bothering you before your injury at work?
- Did your injury cause increased pain?
- When your injury occurred, did any strange noises or feeling emanate from the area of your pre-existing condition?
- Has pain migrated to another location in the same body part affected by the pre-existing condition?
- Have you experienced increased limitation in your range of motion after the injury?

If you answered yes to any of these questions, then treatment for your pre-existing condition is covered under workers' compensation in Arizona. When arguing these kinds of cases, it's important to also consider how the injury is affecting your treatment.

If there is an increased need for treatment on top of your pre-existing condition, then that treatment is covered as well.

## **How Are Problems in Arizona Workers' Compensation Claims Handled?**

### **What you can expect to happen when situations arise that prevent you from obtaining treatment or receiving compensation for your workplace injuries**

Without the assistance of a qualified workers' compensation attorney in Arizona, it's extremely difficult to know if you're being treated properly by your employer's workers' comp insurer – much less deal with any problems in an effective manner.

Fully understanding the inner workings of the workers' comp system requires a person to spend untold amounts of time and resources. You would literally need to make it a full-time job and even then, it could prove intimidating when dealing with insurance companies and their attorneys.

Having a dedicated workers' compensation attorney who is a certified specialist by the State Board of Arizona in your corner can go a long way toward obtaining your rightful workers' compensation benefits. Insurance companies will then become more receptive to your claim as they see they're not just dealing with someone who is largely unaware of how the system works and the rights afforded to injured workers under the law.

### **Consultation with insurers and their representatives**

The first thing an Arizona workers' compensation attorney will do after reviewing your case is to consult with the insurance company's adjuster in-person or over the phone. Perhaps the adjuster didn't do something properly and simply needs to be reminded of the law. Or maybe they do not have complete information and that's causing your claim to be held up.

Either way, many workers' compensation claims are settled amicably over the phone – both sides of the case generally prefer this route...it's quick, it's painless.

In some instances, consulting with an insurance adjuster or the insurance company's attorney on the phone will be enough to settle the case outright. You and your attorney will need to decide if a settlement in this regard will be sufficient to meeting your needs.

## **Formal Hearings in an Administrative Court**

If you and your workers' comp insurance company fail to reach an agreement, a formal hearing can be requested.

These hearings are formal legal proceedings in which an administrative law judge decides what benefits, if any, must be paid among other issues. Each side will present evidence and call witnesses in a court-type setting. Decisions handed down by the judge are binding unless either side decides they want to pursue an appeal.

If you experience problems in obtaining your rightful workers' compensation benefits or you feel you're not being treated right by the insurance company, this is what you can expect to happen in a general sense. Each case is unique – some may only require a phone call to resolve while others may require court action.

Review your case with a licensed **workers' compensation attorney in Arizona** to understand the complexities and the process of obtaining your rightful benefits. It costs no more to hire a certified workers' compensation specialist.

In the meantime though, learn the proper steps of **finding the right workers' compensation attorney** and what to look for when evaluating various legal options available to you. **It costs no more to hire a Certified Workers' Compensation Specialist!!**

## **Finding the Right Arizona Work Injury Attorney**

### **How can I find quality legal representation regarding my work injury?**

Whether your work injury occurs all of a sudden or over a period of time, finding help in obtaining your full workers' compensation benefits can be a challenge. Most of us don't wake up every day thinking we'll need to find an attorney, or doctor or any other unique service we don't use day-to-day.

Much of the time though, recovering medical and wage loss benefits from a work injury requires the assistance of someone with the experience in navigating the system and dealing with employers and insurers in a legal sense.

You can do a lot to understand the system yourself but not having experienced representation with you can likely hinder the potential benefits you ultimately receive.

**Robert Wisniewski has litigated more Arizona cases than any other attorney and is certified as a Specialist in Workers' Compensation by the State Bar of Arizona. It costs no more to hire a Certified Specialist.**

Continue reading to learn more about how you can find a qualified Arizona work injury attorney, what kinds of qualifications you should look for and what kinds of questions you should ask when interviewing a potential attorney for your case.



## **How You Can Help Your Attorney Win Your Case**

### **If you hire a workers' compensation attorney, help them help you obtain full treatment and benefits for your injuries**

As attorneys representing injured workers, our main responsibility is to do everything we can to get the medical treatment and maximum amount of wage loss benefits prescribed under the law.

But in order to fully maximize the amount of benefits you ultimately receive, we depend on our clients to provide us with the information we need to fully represent your case. There are several things you can do to aid us in this effort.

As you may know, insurance companies, corporations, government entities and others have personnel carefully working on their side to try and decrease the amount of benefits you ultimately receive. That's why it's important you do the following to ensure your case isn't derailed or benefits reduced.

The following suggestions are based on years of experience representing both sides in a workers' compensation claim. When approaching your case, keep the following in mind.

### **Document everything and have copies**

Since insurers and companies have limited communication directly with you, they rely heavily on medical records to determine the amount of compensation you're owed. Therefore, your records need to be complete, accurate and available to us.

Do your part by making sure every injury, condition or medical problem connected with your case is included in your medical records. If they're not, insurers will question if the condition is connected with your work injury. Be sure you communicate all problems clearly to the doctor and provide detail on what your symptoms are and which body parts are affected. And be sure you clearly communicate with your doctor how your injuries are affecting your daily life – ability to work, sleep, perform daily chores at home, etc. – and be sure this is included in your records.

This applies to treatments as well – insurers will only pay for treatment related to your claim. If it's not recommended by a medical provider **IN WRITING**, it will most likely not be paid for. Every treatment connected with your injury must be carefully documented...that includes **EVERYTHING** (over-the-counter medications, slings, bandages, gym membership in connection with an ordered exercise program, massage therapy and more).

Your medical records need to reflect **ALL** recommended and performed treatments. If you have any gaps in your treatment, there needs to be a reason why. If you do have gaps in your treatment and they aren't documented as to why, insurers will either assume you got injured again or are trying to "game" the system.

## **Watch what you say and do**

Besides good documentation, you also need to be very careful about what you say and do. Things you say or are seen doing can affect the ultimate outcome of your case, perhaps even derail it completely.

### ***Watch what you say***

That's one reason why you should never speak with anyone from an insurance company. Adjusters and investigators are trained to build a rapport with you and gain your trust. They're not just being friendly but are likely trying to get you to say something that will allow them to challenge parts of your case or even the entire thing.

Always remember, no matter how nice an insurance adjuster or investigator seems, a big part of their job is to pay you the absolute minimum.

Continuing on this theme, you should only discuss medical issues with your doctors and healthcare providers. Nothing looks worse to a judge and jury than a statement that reads "patient is stressed that she will not get a large settlement for her injuries." Also, your doctor's perception could affect the treatment you receive if they believe your only goal is to obtain a large recovery.

We understand the desire to discuss your situation with someone...it's natural to want to talk about something that's having such an impact on your life. But limit your conversations to close friends and family in the privacy of your home. Always be aware of where you are and who is around when discussing your case.

And whatever you do, don't brag about your case or any settlement. If the other side finds out your bragging about your case, it brings into question the legitimacy of your claim and whether your injuries are as severe as you make them out to be. If you go around saying certain things, a judge will begin questioning your motivations...which is what you don't want, of course.

### ***Watch what you do***

Another way the other side may try and reduce your claim is surveillance. It's in fact pretty common so you can be sure someone will be watching you at some point during your case.

Many medical conditions brought on by workplace injuries come and go. Some days will be better than others. Therefore, one day you may feel like going fishing or doing yard work. On others, you will hardly feel like doing anything. If the insurance company gets footage of you doing these kinds of activities on your 'good' days, they will ask your doctor, a judge or jury to compare your medical file detailing the 'bad' days to whatever the surveillance footage shows.

You can try to explain the footage is showing you on one of your 'good' days but the damage will be done.

And don't think surveillance is limited to private investigators. Co-workers, neighbors, doctors and even friends can be asked to testify on your activities and their observations.

In the end, you are responsible for many aspects regarding your workers' compensation claim. While Phoenix, Arizona attorney Robert E. Wisniewski works tirelessly to obtain the full amount of benefits you are entitled to, he can't control everything.

You must pay careful attention to your records, receipts, actions and language. One mistake could spell disaster for your claim.

With this general outline of the workers' compensation process in Arizona, you're well on your way to ensuring you receive the benefits you need to treat your injuries and pay you for lost wages.

### ***Temporary Disability Benefits***

During the course of your treatment, you may have to miss work and/or your physician will restrict your job duties. If these restrictions prevent you from performing your pre-injury job and earning your pre-injury wage, you are entitled to receive wage loss or temporary disability benefits.

There are two types of temporary disability benefits: **temporary total disability and temporary partial disability benefits.** (NOTE: There are no cost-of-living increases.)

Temporary total disability means you are completely prevented from working. They pay 2/3 of your average monthly wage up to a certain amount each month (limits change each year).

Temporary partial disability means you can still work, but in a limited role. Your employer offers limited duties within the scope of the doctor's restrictions, likely at a reduced wage. In this case, temporary partial disability benefits will pay 2/3 of the difference between your pre-injury wage and what you're receiving for the part-time or modified employment.

### ***Permanent Disability Benefits***

At a certain point, your condition will stabilize and quit improving...your condition is not expected to improve with additional medical treatment (although you may receive ongoing medical treatment to maintain your condition). When this time comes, your permanent disability benefits will be determined.

This event is what's known as Maximum Medical Improvement (MMI). Once a doctor declares you have reached MMI, they need to determine if you're back at your pre-injury condition or whether you have permanent impairment. If you have permanent impairment, workers' compensation benefits in Arizona pay either permanent partial disability or permanent total disability benefits up to a limit.

Fundamentally speaking, permanent partial disability means you have some condition that will be a permanent part of your life but you are still able to hold down a job. Permanent total disability on the other hand means your condition is so severe that you are unable to work at all.

Most workers' compensation cases in Arizona fall into the first category.

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To determine the amount of permanent partial disability benefits, the doctor assigning the MMI designation refers to the American Medical Association's Guide to the Evaluation of Permanent Impairment, 6<sup>th</sup> Edition (Revised), or "AMA Guidelines" to assign ratings to parts of the body affected by the injury. They may assign an injured arm, shoulder, neck and psychological rating for example.

### ***Disfigurement Benefits***

If your injury causes scars and/or disfigurement exposed to public view, you may be entitled to a lump sum disfigurement award. The amount of a disfigurement award is determined by the Industrial Commission of Arizona whose determination is based on the severity and visibility of the scar.

### ***Death Benefits***

If the unthinkable happens and a worker dies in an accident or as a result of their on-the-job injury or occupational disease, their surviving dependents are entitled to death benefits. Generally speaking, death benefits pay 2/3 of the worker's average monthly wage – how long death benefits last depend on the dependents' relationship to the deceased.

- Surviving spouse – receives death benefits for the rest of their life or until they remarry.
- Dependent children – receive death benefits until age 18 or 21 if they're in school or can prove dependence on the worker.
- Others (parents, grandparents, siblings, children over 18/21) – can receive death benefits if they can prove either partial or whole dependence at the time of the worker's death. Partial dependents receive benefits equal to the percent they were dependent on the worker.

Additionally, employers are required to pay up to a certain amount in burial and funeral expenses and they are responsible for any and all medical bills connected with the injury.

If you have any further questions or would like to schedule a free case evaluation, **contact workers' compensation attorney Robert E. Wisniewski** today.

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