



Biggest Mistakes

7

THAT CAN WRECK  
YOUR WORKERS'  
COMPENSATION  
CLAIM AND HOW TO  
AVOID THEM

What Every  
Pennsylvania Worker  
Needs to Know about

***Workers'***  
**COMPENSATION**

**MHK**ATTORNEYS



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## **DISCLAIMER**

Your employer's workers' compensation plan handles many claims like yours every day. We know this because people like you call our offices every day and are shocked when we explain their rights to them. We wrote this book for YOU. This book is for information purposes only and should not be construed as legal advice. Each client and each set of facts and circumstance is different and requires a skilled attorney to apply the law and advocate for the client. Receiving this book does not imply an attorney/client relationship between Merwine, Hanyon & Kaspszyk, LLP and the reader.

After reading this book, if you have any unanswered questions, we would be more than happy to discuss your case with you and help you decide whether you need an attorney.



## FOREWORD

Frankly, we wrote this book to make it easier for us to provide a premium service to our clients. An educated client is the best kind of client. We are tired of employers and their big workers' compensation insurance companies taking advantage of injured employees who feel they have nowhere to turn. You're not alone. Our firm has represented thousands of workers' compensation clients and this book is the result of their commonly-asked questions *and* the mistakes we've seen most often. Many times, our clients feel they are at the mercy of these large insurance companies and have no choice but to take what is offered or get nothing at all. You have rights, and this book was designed to educate you on those rights—in simple terms, not a bunch of legal mumbo-jumbo.

### **The One Thing You Should Never Allow the Workers' Comp Insurance Company to Control**

The intent of this book is help consumers stop employers, employer-hired medical providers, insurance companies and insurance company lawyers from reducing, thwarting and denying injured workers the rights they have under the Workers' Compensation Act. In this book, we have outlined a number of things that you should and should not do when you have a claim. However, we asked ourselves what is the most important thought that we need to impart upon the

readers of this book. In the most general terms, **you should never allow the workers' comp insurance company to control your case.** You need to understand and stand up for your rights.

When you have been injured at work, you should never allow the workers' compensation insurance company to control you and your workers' compensation case. Insurance adjusters want you to think they are doing their jobs properly and that they are looking out for your interests. Nothing could be further from the truth. Insurance adjusters will purposely mislead and misinform you about the status of your case and about what you are entitled to in terms of medical coverage and wage loss benefits. The only way to take control of your case is to become informed. The more information you possess as to how the system works, the better off you will be. It's like playing poker or monopoly; if you don't know the rules of the game, you will never win. A qualified workers' compensation law firm can give you the information you need to take control of your case and get the benefits the law provides.

Of course, every workers' compensation claim is different. After reading this book, if you have additional questions, please feel free to call us—with no obligation!

CHAPTER ONE  
**THE 7 BIGGEST MISTAKES THAT CAN WRECK  
YOUR WORKERS' COMPENSATION CLAIM**

**Biggest Mistake #1: Failing to report your work injury as soon as possible.**

You're a hard worker and you're an asset to your employer. You're not one of those people who try to "game" the system—but now you've twisted the wrong way and felt a pop in your back. It hurts a bit, but you think you can work through it. You've seen what happens when other employees report work injuries and you don't want the hassle; you just want this to go away. What do you do? The answer is simple; you must report your injury, preferably in writing, as soon as possible, to the person designated by your employer to take such reports. The longer you wait to report the injury, the more likely your employer's workers' compensation insurance carrier will be able to deny it happened or was related to work. Even if you don't believe you will need medical treatment or miss any time from work as a result of it, REPORT IT! A very large percentage of serious work injuries seem to be minor when they first happen, but slowly get worse and become debilitating over time. Failing to report your work injury as soon as possible can result in the workers' compensation insurance company being able to avoid paying for your medical treatment or wage loss.

## **Biggest Mistake #2: Taking your employer's advice about your rights.**

You did the right thing by going to your supervisor and reporting your work injury, but your supervisor is being less than cooperative. Your supervisor tells you that you waited too long to report your injury, or it was your fault. Perhaps they tell you that you will get in trouble if you file for workers' compensation benefits, or a multitude of other reasons why you should not or cannot get workers' compensation benefits. Even worse, sometimes you are told to lie and say your injury didn't happen at work, or that you should file for "short term disability benefits" instead. Unfortunately, these types of responses from an employer are not uncommon. Many employers do not want to report your injury to their workers' compensation insurance company, out of fear that their insurance rates will go up. Therefore, some employers will tell you anything to avoid reporting your injury. If you try to be a "good employee" and you do not verify the accuracy of what your employer is telling you by talking to a lawyer who knows the workers' compensation law, you are most likely making a big mistake.

## **Biggest Mistake #3: Failing to seek timely medical treatment and failing to tell your medical provider that the injury happened at work.**

You hurt your back at work, but you need your job, so you tough it out and you don't go for medical treatment right away. But the pain keeps getting worse. You cannot sleep, over-the-counter pain medication is not working, so you eventually decide to go to a medical provider for treatment.

When you go, you don't tell the medical provider that your back pain started as a result of a work injury. After a couple of months of treatment you're still not better. In fact, you're worse, and now you're scared that you won't be able to do your job anymore due to the pain. You finally decide to tell your medical provider that it happened at work. You just committed two of the most common and biggest mistakes: failing to get timely treatment and failing to tell your medical provider at your first visit that the injury was caused at work. This is critical because once a medical provider is aware of the fact that the injury happened at work, he or she must bill the workers' compensation insurance carrier, not your health insurer. But much more critical is the fact that your delay in going for treatment and your delay in telling the medical provider it was related to a work injury, gives your employer's workers' compensation insurance carrier some powerful evidence to successfully deny paying the workers' compensation benefits you're entitled to.

**Biggest Mistake #4: Failing to follow your medical provider's instructions.**

You reported your work injury and you started to go for treatment. The medical provider has suggested that you go for diagnostic tests, like MRIs or EMGs, and has directed that you attend physical therapy several times a week. But the pain medications that you were prescribed eased the pain and you really don't have time to, or just don't feel like going for the tests the doctor ordered or attending physical therapy, so you don't bother. Big mistake, for lots of reasons. First, your injury

may not be fully and accurately diagnosed if you don't have the tests that the medical provider ordered to be performed. Second, your injury may not heal if you don't follow your medical provider's treatment plan. Third, when you go back to see the medical provider, he or she will indicate in your records that you are non-compliant with your treatment plan, which will hurt your workers' compensation claim. Finally, and possibly most importantly, your non-compliance may make your medical provider believe that you are really not hurt, and therefore they may discharge you from treatment, release you to return back to work and discontinue your pain medication. If that happens, you will have to return to work and the pain that was controlled by the pain medications may return once you're no longer on the medication. If you then attempt to go back to your medical provider, he or she may no longer be willing to treat you due to your prior non-compliance. Bottom line: follow your medical provider's instructions.

**Biggest Mistake #5: Trusting the workers' compensation insurance company.**

You reported your injury; your employer did the right thing and turned your claim over to the workers' compensation insurance company. The insurer assigned an adjuster to handle your claim. You have spoken to the adjuster, who seems really nice and helpful. Therefore, you trust the adjuster and you don't think you need an attorney to get involved. Big mistake. Even though most insurance adjusters are honest, remember who they work for: the insurance company. The adjusters are



trained to earn your trust and get you to listen to what they tell you to do. What does this mean? Their job is to minimize the cost of your claim for the insurance company, and get you off of workers' compensation and back to work as soon as possible, even if you are not truly ready to go back to work. They have no legal obligation to tell you your rights. Even if they lie to you, which sometimes happens, they cannot be sued! Think about this before you decide to listen blindly to what the workers' compensation insurance adjuster tells you.

**Biggest Mistake #6: Failing to get legal advice early in the process.**

It is very common for injured workers to presume that since they and their boss knows that they got hurt at work, they are entitled to workers' compensation benefits. They also presume that the workers' compensation insurance company is obligated to take care of them, so there is no need for legal advice. Big Mistake. Workers' compensation insurance companies are private, for-profit businesses. They make money by taking in insurance premiums from employers and they lose money by paying out money on claims like yours. They will do whatever they are legally permitted to do to avoid paying your claim. As explained in #5 above, sometimes they will even do things that they are not legally entitled to do to avoid paying your claim. If they do, you cannot sue them for "bad faith" because workers' compensation insurance companies are immune from such law suits. Knowing this, you should seek the advice of a workers' compensation attorney as soon as possible. The longer you wait, the more damage you could

be doing to your claim. A workers' compensation attorney obligation is to you and only you (but see #7 below). It is the job of the attorney to know and explain your rights to you.

**Biggest Mistake # 7: Failing to pick the right law firm to represent you.**

Many attorneys advertise that they handle workers' compensation claims. Advertising and handling workers' compensation claims is not the same thing. Although there are many issues to consider when picking a firm that's right for you, there are a few important questions that you should always ask, including, how many years experience does the firm have handling workers' compensation claims? Experience matters. Also, to litigate a claim, you will almost always need to have your treating doctor's deposition as evidence. Doctors usually charge several thousand dollars per hour for a deposition. Does the firm you are considering hiring pay that cost or do they expect you to pay it, even though you are not working and have no income? This is something you need to know before you hire an attorney. Another question you may want to ask is, does the firm only represent injured workers, or do they also represent workers' compensation insurance carriers? It is permissible for lawyers to represent both insurance companies and injured workers, but it may raise questions in your mind as to where the attorney's loyalties really lie. Just asking these few questions can quickly eliminate from consideration many firms whose advertising seems impressive.