

Subrogation of Workers' Compensation Claims in the District of Columbia



Election of Remedies:

- The claimant may pursue a workers' compensation claim against the employer and sue the third party. He does not have to choose, or elect, his remedy.
- A co-worker cannot be sued as a third party in his capacity as officer or director.

Statute of Limitations:

- The statute of limitations for tort actions is three years from the date the action accrues, usually the date of the incident. D.C. Code §12-301.
- The filing of a workers' compensation claim has no effect on the running of the civil statute of limitations for tort actions. *Simpson v. Baker*, 620 A.2d 254 (D.C.1993).
- The claimant has the exclusive right to file a third-party action for the first six months after a Compensation Order has been issued by the Mayor. D.C. Code §32-1535(b).

Amount of Recovery - Claimant Institutes Third Party Action:

- The employer/insurer receive a credit for the net amount recovered by the claimant in the third-party suit, but must make payments for any compensation awarded to the claimant in excess of such credit.
- The employer/carrier has an equitable lien, not a statutory lien, for the full amount of benefits paid on behalf of the Claimant. *Williams v. Lumbermen's Mut. Cas. Co.*, 664 A.2d 342 (D.C. 1995). Lien is reduced by pro rata share of the claimant's attorney's fee.
- If the claimant settles the third-party case without the employer/carrier's written consent, the employer/carrier has no future liability for compensation. D.C. Code §32-1535(g).

Amount of Recovery - Employer/Insurer Institutes Third Party Action:

- From the third-party recovery proceeds, the employer/carrier may deduct costs, a reasonable attorney's fee (rates are \$96/hour for paralegals and a sliding scale of \$200-\$310/hour for attorneys based upon experience) and all amounts paid as compensation and paid as medical treatment. D.C. Code §§32-1507(g), 32-1535(b).
- The Mayor then makes a determination as to the estimated cost of all future benefits in the case and directs the employer/carrier to hold this amount in a trust fund to pay future compensation.
- The claimant is then entitled to 80% of the excess with the employer retaining 20% of the excess.

Issues:

- Any party disputing any aspect of the claim, or payments owed, may file a Request for Informal Conference with the Office of Workers' Compensation ("OWC").
- The claimant is not entitled to the payment of attorney's fees if he or she fails to participate in an informal conference.

Procedure for Workers' Compensation Claims in the District of Columbia

Informal Conference:

- The OWC will schedule the matter for an informal conference within thirty days of receiving a Request for Informal Conference.
- A single claims examiner will handle a case for its duration and will schedule the informal conference for a specific time and date.
- There is no discovery at the OWC level in the District of Columbia, other than the right to advance receipt of a copy of applicable medical records.
- Informal conferences are conducted in an informal setting. The Claimant does not testify under oath. Medical records may be submitted contrary to the ordinary rules of hearsay, but no fact or expert testimony is permitted.
- The claims examiner will not provide a recommendation at the time of hearing, but instead subsequently provides the parties with a written recommendation, which includes findings of fact and conclusions of law.

Controversion- Formal Hearing:

- Either party may reject, or controvert the Claims Examiner's recommendation via letter within fourteen business days after the date of the recommendation and file a request for formal hearing within thirty-four business days.
- Full discovery is permitted. The matter is heard by an Administrative Law Judge. There is no right to a jury.

- The Claims Examiner's recommendation is inadmissible as evidence.
- A party that rejects a recommendation is not bound by it.
- The Administrative Law Judge ("ALJ") makes written findings of fact and conclusions of law that are binding on the parties.

Appeals- CRB and Court of Appeals

- Any party aggrieved by the ALJ's decision may appeal, as a matter of right, to the Compensation Review Board ("CRB") for a review of the record. The CRB's findings are not only binding upon the parties but are considered the Agency's interpretation of the statute and are applicable to future cases.
- Any party aggrieved by a decision of the Compensation Review Board may appeal, as a matter of right, to the District of Columbia Court of Appeals.