



BY CHARLES E. BOYK, DALE R. EMCH  
& MICHAEL A. BRUNO

# THE OHIO WORK INJURY BOOK

---

KNOW YOUR OPTIONS.  
PROTECT YOUR RIGHTS.



CHARLES E. BOYK LAW OFFICES, LLC

WE HAVE OFFICES IN DOWNTOWN TOLEDO, WEST TOLEDO,  
SOUTH TOLEDO, FINDLAY, BOWLING GREEN, AND SWANTON.

[WWW.CHARLESBOYK-LAW.COM](http://WWW.CHARLESBOYK-LAW.COM)

# **The Ohio Work Injury Book**

Charles E. Boyk, Michael A. Bruno, and Dale R. Emch  
405 Madison Ave., Suite 1200  
Toledo, Ohio 43604  
419.241.1395 Toll-free 1.800.637.8170 Fax 419.241.8731

Copyright © 2008 by Charles E. Boyk, Michael A. Bruno, and Dale R. Emch

All rights reserved. No part of this book may be used to reproduce in any manner whatsoever without written permission of the author.

## **WORKPLACE INJURIES CAN DESTROY LIVES**

Accidents suffered at work can devastate your life. One second you're working hard on the job, the next you've got an injury that prevents you from working for days or months. In some cases, injured workers never get back on the job.

Just being injured is bad enough. You're in pain and you'd rather be working instead of sitting around the house. Trying to navigate the complicated bureaucracy of the Ohio Worker's Compensation system can make life that much more difficult for people trying to regain their health and get back to work.

That's why we've written this book. In our office, we believe **knowledge is power**. We hope to provide people with information so they can understand the worker's compensation process. Having that knowledge may help you learn how you can be compensated for the injury you've suffered at work, and also will give you a better understanding of your rights.

## **WORKER'S COMPENSATION CLAIMS DIFFER FROM NEGLIGENCE CASES**

Worker's compensation claims are much different than the negligence cases that result from situations like car accidents or dog bites. In a negligence case, you can be compensated for your medical bills, damage to your property, and your pain and suffering. In some cases, you can even seek additional money to punish someone for their bad behavior, such as when you're struck by a drunk driver. If a lawsuit needs to be filed, it's done through the court system and the case is heard by a judge.

The worker's compensation system was set up to eliminate many of the claims that could be brought through a negligence case. The Ohio General Assembly designed a system that helps employers minimize the costs they might have to bear through employee injuries. The theory is that if employers had to pay for things like pain and suffering, or punitive damages, it would be too expensive to do business. Having to defend the cases in court would cost even more money. Whether or not you believe that's fair to employees who are hurt on the job, that's the system we have. Instead of having cases heard by a judge or jury, work comp claims are handled through an administrative hearing officer.

The state requires employers to be self-insured or to pay into a fund that is used to compensate injured workers for things like the wages they lost due to the injury and for their medical bills. It's a no-fault system, which means that it doesn't matter whether you were injured because of your own actions or as the result of a co-worker or supervisor's actions. If you were injured on the job, you're generally allowed to file a claim and get some type of compensation.

In some situations, if an employer's actions were so outrageous because they ordered an employee to undertake a very dangerous task without the proper safety conditions or if they failed to correct a known safety hazard, the case can be taken out of the worker's compensation system. The legislature, though, has made filing these types of lawsuits extremely difficult so not many people would qualify.

## **WE CAN HELP YOU**

The authors of this book have more than 50 years of combined legal experience. **Chuck Boyk** has been in private practice for 24 years and heads the Charles E. Boyk Law Offices, LLC. During his career, he has handled thousands of personal injury and worker's compensation cases. He has conducted numerous seminars for other attorneys to help them understand the world of personal injury law. In addition to his personal injury and worker's compensation work, Chuck

has represented thousands of criminal defendants, handling anything from routine traffic offenses to murder cases.

**Mike Bruno** also has been practicing law for nearly a quarter of a century. Mike, who has been named an Ohio Super Lawyer, has a unique background that benefits our clients. As an assistant Lucas County prosecutor, he handled thousands of felony cases, including death penalty murder cases. As an insurance defense attorney, he handled serious personal injury cases representing insurance companies. Now Mike puts that experience to use for people who have been injured on the job and in car accidents. Mike has handled more than 100 jury trials, is Board Certified by the National Board of Trial Advocacy, and is AV rated by Martindale Hubbell, the highest rating an attorney can receive.

**Dale Emch** focuses his practice on personal injury cases, but also handles worker's compensation cases and criminal matters. Dale writes a column for the Toledo Blade called "Legal Briefs" in which he answers readers' questions about legal matters. He graduated *cum laude* from the University of Toledo College of Law, where he was an associate member and note and comment editor of Law Review. Dale is a member of the Toledo Bar Association, the Lucas County Bar Association, the Ohio Association for Justice, and the American Association for Justice. He serves on the Lucas County Public Defender Commission and is the secretary of the Media Relations Committee for the Toledo Bar Association.

### **THIS BOOK DOES NOT OFFER LEGAL ADVICE**

We're happy that you've taken time to read our book. You should note, however, that ordering or reading our book does not create an attorney-client relationship. We also aren't offering a legal opinion in these pages because every case is different based on the facts of the situation. If you want our legal opinion, please contact us at 800-637-8170 or 419-241-1395. We'll be happy to set up a free meeting with you.

### **BENEFITS AVAILABLE TO INJURED WORKERS**

A number of different types of benefits can be sought by an injured worker depending on the type and severity of the injury. To give you an idea of the claims that might be filed in your case, we'll review those we see most often in our practice.

#### **Temporary Total Disability**

We probably file more claims based on temporary total disability than any other. Usually, people who are injured only have to stay off the job for a relatively short period of time. Fortunately, people can recover from these injuries and get back to work.

Temporary total disability helps replace wages lost for those who are unable to work for a certain period of time. For example, if a worker had a pallet fall on his foot that prevented him from doing his job until he recovered from his injuries, temporary total would be the proper claim to file.

The injured worker must miss eight consecutive days in order to qualify for temporary total disability. For the first 12 weeks of disability, injured workers receiving temporary total disability are compensated at 72 percent of their full weekly wage. That figure is based on the average of the gross wages earned during the six weeks prior to the injury.

After three months, a claimant receives  $66 \frac{2}{3}$  his average weekly wage. In this situation, the average weekly wage is calculated based on the worker's average gross wages for one year prior to the injury.

It should be noted that although temporary total disability does not completely replace a worker's lost income, worker's compensation benefits are not taxable.

### **Permanent Partial Disability**

Sometimes workers sustain physical or psychological injuries that will remain with them forever, but may allow them to continue working. In such a case, the worker would be eligible for a permanent partial disability award based on the percentage of the impairment. For injuries that occurred prior to June 30, 2006, the injured worker had to wait 40 weeks before filing this type of claim. The waiting period for injuries after that date is 26 weeks.

In order to determine the percentage of loss, the worker is examined by a BWC doctor, who determines the percentage of impairment of the body part in question based on the American Medical Association's Guides to Evaluations of Permanent Impairment.

If the injured worker thinks the percentage determined is too low, he can object to that finding and opt for examination by his own doctor. The hearing officer then examines the findings by the doctors and determines the percentage of impairment. That percentage is the basis of any compensation the worker would receive.

The percentage of disability determined by the hearing officer is used to calculate the award paid based on a formula employed by the BWC.

An example of an injury that would be the basis of a permanent partial disability claim would be a worker who gets burned on the job and is left with permanent scar tissue. A percentage of disability would be determined to calculate the award paid to the worker.

### **Permanent Total Disability**

Someone who is injured so seriously on the job that he'll never be able to gain sustained employment is eligible for permanent total disability benefits.

If the hearing officer grants the application for permanent total disability, the injured worker can receive compensation for life.

Compensation for this type of award takes into account the statewide weekly wage average and whether the injured worker receives Social Security benefits.

A worker whose workplace injury caused him to become paralyzed would be an extreme example of someone who may be eligible for permanent total disability benefits. The injury, though, does not need to completely incapacitate the worker in order for this type of benefit to be awarded.

### **Violation of a Specific Safety Requirement**

The state legislature and the state Industrial Commission require employers to follow a number of specific rules related to workplace safety. If an employer does not follow a rule designed to safeguard the lives, health, or safety of an employee, and the employee gets hurt as a result, a claim called a violation of a specific safety rule can be filed.

Essentially, this is a claim that both punishes the employer and compensates the employee. The award varies based on the severity of the injury and the extent of the violation.

In our office, we help clients file a report with the Occupational Health and Safety Administration, which oversees workplace safety issues. The administration conducts an investigation and cites the company if it finds violations. That report can be used to substantiate a claim alleging violation of a specific safety requirement.

An example of a situation where this type of award might be warranted would be when an injury results from an employer requiring an employee to work at a certain height without proper scaffolding or safety harnesses.

### **Lump sum settlements**

In certain circumstances, the employer and the injured worker may enter into a settlement agreement to compensate the worker for injuries sustained on the job. The settlement, though, must be approved by the BWC, regardless of whether the employer is state-funded or self-insured. The BWC settlement department determines whether the settlement agreement is justified and fair.

An injured worker should be careful before agreeing to a lump sum settlement because it will stop him from seeking additional compensation through the BWC. It closes the door for all payments for future compensation and future medical treatment related to the claim.

### **Workplace Intentional Tort**

Sometimes an employer's conduct that results in a workplace injury can be so egregious that an additional claim can be made outside the worker's compensation system. This type of claim is made through a lawsuit filed in court that alleges a workplace intentional tort, which means the conduct was so bad that the courts view it as if the employer acted intentionally to cause the harm.

These cases have always been difficult to win because the standard that must be met in order to prevail is extremely high. In recent years, it's gotten even tougher. The Ohio General Assembly passed legislation that raised the standard of proof so high that an injured worker can only prevail on this type of claim in very limited circumstances. The Ohio Supreme Court has not considered whether this standard is constitutional, so an attorney would need to be consulted to determine whether this type of claim is viable.

In our practice, we handled a major workplace injury case that arose prior to the date the new statute took effect. The injured employee initially approached us about filing a worker's compensation claim for him after he suffered horrific injuries from an electrical shock. After looking at the facts of the situation, we determined that the employer acted with such complete disregard to numerous safety rules and regulations that we filed a lawsuit for workplace intentional tort. Eventually, a confidential settlement was reached for nearly \$2 million.

The lesson here is that if your injuries were caused because your employer failed to follow the proper safety rules, you may be able to pursue a remedy that exceeds a worker's compensation claim.

### **TIPS THAT COULD HELP YOUR CASE**

Everyone who has watched a courtroom drama has an idea of what court should be like. The imagined setting is a large, ornate courtroom presided over by a stern judge, with lawyers locked in heated battle in front of an engrossed jury.

That's not what you get in a worker's compensation case. The world of worker's compensation is a bureaucrat's dream.

In Toledo, the Industrial Commission is housed downtown in One Government Center. A large waiting area anchors the office, and a number of small rooms where cases are heard line the periphery.

Rather than having a judge preside over a case, a hearing officer will review the facts of each claim by reviewing medical reports and listening to lawyers or representatives of each party. In some cases, the hearing officer will take sworn testimony by the injured worker or from a representative of the employer. A finding may be issued on the spot, or the officer may take additional time to review all the evidence before coming to a decision.

It's not very dramatic, but obviously the outcome is important to the injured worker. Here's a very general description of how the process works and our suggestions about some issues you may want to consider:

- **Report the injury to your employer:** Always make sure you tell your employer when you've been injured at work. Ask your employer to produce a written report about the incident. Whether or not your employer completes a written report, make sure you document the date and time of the injury, how it happened, where it happened, and whether there were witnesses. Do this even if you have to produce the report yourself. Also, keep all receipts and hospital records.
- **First Report of Injury Form:** Complete a First Report of Injury form, which is called a FROI in the work comp world. Your employer is supposed to fill out the form, but if that doesn't happen, an attorney can help you. The form is crucial because it's the only way you can get a claim number on file with the Bureau of Worker's Compensation. Without a claim number, your claim will go nowhere. So, complete a FROI as soon as possible. Generally, an injured worker has two years from the date of the injury to file a claim.
- **Get a claim number:** You need a claim number issued by the BWC. Once the FROI is filed, contact the BWC so you can get an ID claim card. Everything that happens with your case will be linked to the claim number on the card.
- **Get medical treatment:** Many people don't realize they don't have to get their injuries treated by their employer's doctor. You can treat with any doctor you want as long as the doc is certified by the BWC. If your family doctor isn't BWC certified, consult a lawyer who does a lot of this work to get references for qualified doctors. You can only get compensated for the conditions that the BWC determines were caused by your workplace injury. Your attorney can file a motion that seeks coverage for additional conditions related to the injury. This becomes important if you later have to file a permanent partial disability claim.
- **Mandatory drug testing:** If it's done in a timely fashion, your employer can require you to take a drug test following your workplace injury. If requested, you have to take the test in order to proceed with your claim. If you test positive for drugs, your drug use will be presumed to have caused or contributed to the accident. That presumption, though, is rebuttable and so it doesn't always kill your case.

- **Lost wages:** When you seek temporary total disability benefits, you need to make sure your doctor files a C-84 form with the BWC so you can be compensated for your lost wages. Sometimes doctors forget to do this, so you need to request it or have your attorney work with your doctor's office.
- **Wage differential claims:** If your injury causes a reduction in your work hours or your rate of pay, you can file for wage differential benefits to help compensate you for the difference. The same concept holds true if your injury causes you to change employers and you are working for less pay or fewer hours than you were at your previous job.
- **Contested hearings:** If your employer opposes your claim or a portion of your claim, there may be a contested hearing on the issue. In this situation, you really need an attorney that handles a lot of worker's compensation cases. You need someone who knows what arguments to make for a particular situation in order to portray your situation in the best light possible with the hearing officer.

## **HIRE AN EXPERIENCED WORKER'S COMPENSATION ATTORNEY**

In all but the most straightforward of workplace injuries, the issues encountered in a worker's compensation case are highly technical. The hearing officers and lawyers who do this work seem to speak a different language to each other, punctuated by awkward statements like "we've filed a C-92," or "this hearing is set for a TTD before a DHO." If you don't know that language and your employer has hired an attorney who not only speaks the lingo, but understands the nuances of the issues, you're probably going to be in trouble. It just makes sense for you to have legal representation as you navigate the work comp world.

A lawyer will be able to spot issues that will help maximize your claim so that you're compensated fairly. An attorney practicing in this field understands when it's time to file certain claims or forms, and has been through enough hearings that he or she knows what to expect. Lawyers who don't handle this type of work likely will be as in the dark as you are about the technical aspects, so find someone who makes worker's compensation a regular part of his practice.

As mentioned above, you really need a lawyer if your claims are going to involve contested hearings. While a work comp hearing probably won't get as heated as a trial, it's still an adversarial process that pits you against your employer.

Before hiring a lawyer, sit down with him or her to make sure you'll be comfortable with the working relationship. You'll also likely be dealing with your lawyer's paralegal, who should have an in-depth understanding of how the process works and will help guide you through it. In fact, you probably will be dealing with the paralegal more often than the attorney on bureaucratic issues.

Once you decide to retain a lawyer, you'll have to sign a contract that provides the specifics of your agreement. Most of these contracts are fairly simple, primarily addressing the fee arrangement and the rights and obligations of both parties. Make sure your lawyer gives you a copy of the contract you sign so you can keep it for your records.

## **YOUR LAWYER DOESN'T GET PAID UNLESS YOU DO**

Hiring a lawyer can cause some stress because for most of us it's an unfamiliar process. People want to make sure the lawyer understands the issues and will work hard to represent their interests. As in any business, it's natural to wonder how much the lawyer's services will cost.

Most attorneys who represent injured workers take what's called a contingent fee, which means that the lawyer's fee depends on his success in resolving the case. The fee comes out of whatever you are awarded for your claims. Usually, the lawyer takes one-third of the gross award or settlement. The arrangement works well for both parties. The lawyer takes a risk that he'll never get paid if the claim goes nowhere. The client gets to pursue his claim without having to come up with thousands of dollars in up front legal fees. Without this arrangement, some people never would be able to bring a claim because they couldn't afford it.

Additionally, you may be charged a fee of a few hundred dollars for each contested hearing your attorney attends. That fee usually can be paid through the recovery of future awards you would receive through your worker's compensation claim.

We all want to keep expenses in our lives down, but sometimes we have to pay for expertise. If water is spraying out of the pipes under your sink and you don't have the tools or knowledge to fix the problem, you call a good plumber. The same concept holds true for a worker's compensation attorney. When you're talking about trying to replace a portion of the income you've lost from being hurt on the job, you really can't afford to handle the case yourself and risk making a crucial mistake.

## **CONCLUSION**

We hope this book serves as a helpful reference tool for understanding worker's compensation cases. Just having a grasp of some of the terminology you'll encounter will make you feel more comfortable with the process and will allow you to speak in a more knowledgeable way with your attorney.

As you've gathered from this book, the issues involved with worker's compensation claims are highly technical and complicated. You can make a go of it on your own, but hiring an attorney who has expertise in this world likely will ease your stress and net you more money by the end of the process. Remember to select an attorney who handles a lot of worker's compensation cases because just having a law degree doesn't make the lawyer proficient in this technical field.

If you think we can help you with your case, please call us at 419-241-1395 or 800-637-8170. A receptionist will gather some information and connect you with a lawyer. Calls that come into our office after hours are forwarded to a lawyer. To learn more about our firm, visit our Web site at **[www.charlesboyk-law.com](http://www.charlesboyk-law.com)**.

We'll schedule a free consultation with you and give you our professional opinion about whether or not we can help you. You can also order a copy of The Ohio Accident Book, which we wrote to provide people with practical information about personal injury cases. You can also order one of Chuck Boyk's special reports for people who have been bitten by a dog or involved in a truck accident. We have six offices in northwest Ohio where we can meet with you to discuss your situation. We'll work hard to get the best result possible for your worker's compensation claim.