

Georgia Workers' Compensation Benefits - What Employees Are Entitled To Benefits?

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What is Workers' Compensation?

In Georgia, Workers' Compensation operates as a "no fault" system for compensating injured workers for time missed from work and for costs of necessary medical treatment. The system presents trade-offs for Georgia workers. While it bars claims against an employer for personal injury, it also bars some of the defenses an employer could use against a workers' claim such as "assumption of the risk" or that the injury was caused by a fellow employee.

This system means you cannot sue your employer in State/Superior court for your injuries, like you would in other instances. Instead, an injured employee is compensated according to a schedule set out by the Georgia State Board of Workers' Compensation. Sadly, this means you will not be able to sue your employer for such things as pain and suffering from your injuries.

Exactly who is allowed to make a Georgia Workers' Comp claim?

The foundation of workers' compensation law is in defining who is an employer and an employee for workers' compensation purposes. Unfortunately, it is not always as simple as "I work for Company X, therefore Company X is my employer and I am his employee."

The basic rule as to whether an employee/employer relationship exists involves two seemingly simple criteria; 1) a person in the service of another, who is 2) under contract of hire.

There is no requirement that a work contract be written. Actual pay may not be necessary (ex. Volunteer firefighters or police, elected officials). Minors can still benefit from workers' compensation even if they are working in violation of child labor laws. Also, unlike many states, migrant workers and temporary employees are covered.

However, many types of employment or employers are not subject to workers' compensation. Types of employment not covered by Georgia Workers' Compensation include Domestic servants, Farm laborers, Railroad common carriers, Sports officials (umpire, judge, linesman, scorekeeper, timekeeper, etc.), Licensed real estate salespersons with independent contractor agreements, Partners in a business, and Independent Contractors.

Georgia Workers Compensation does NOT apply to employers that do not have at least three employees operating in the same business within Georgia. These minimum three employees must be "regularly in service" within the state. The term "regularly" does not mean constantly or continuously, only that there is a routine practice by the employer to utilize three or more employees, even if that many employees are working on the date of an accident. In most situations your boss will count towards the three employee requirement.

Independent Contractors

Employers often do everything they can to classify their employees as independent contractors to protect themselves from having to pay workers' compensation to their injured employees. There may be a debate as to whether you are in fact an independent contractor, but if you one, you are not entitled to workers' compensation. While it can be complicated determining whether you are an employee or an independent contractor, below are some of the factors to look at in determining your status:

CONTRACT - Existence of an independent contractor agreement signed by the worker

PAY - An hourly or salaried worker is likely an employee. When a worker is paid on a per-job basis he may be viewed as an independent contractor.

TAXES - If an employer withholds taxes, the worker is more likely an employee. However, just because your wages are reported on 1099 tax form instead of a W-2, your employer has not automatically made you an independent contractor.

TYPE OF WORK - If the workers' job is part of the regular business of the employer, rather than some additional service to the business, it would favor the employer/employee relationship.

JOB "TOOLS" - Who supplies the tools, supplies, or materials of the job? If the worker supplies all their own tools and materials it likely indicates an independent contractor relationship.

HOURS - If the employer controls a workers' hours, it likely indicates an employment relationship.

OVERALL CONTROL - If the employer controls how a worker does their job, as opposed to simply requiring certain results, the worker is likely an employee. These "how" factors focus on the hours, manner, methods, and means of performing the work.

About the Author

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