

**THE ALABAMA
WORKERS' COMPENSATION ACT**

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WHAT TO DO WHEN YOU ARE HURT

1. Immediately report your injury, in writing when possible, to your foreman or supervisor.
2. If your workplace is unionized, inform your union steward and ask that management be given written notice within five days.
3. If you require medical attention, report to the first aid station, dispensary, company doctor or nurse at your workplace.
4. REMEMBER: Do not sign any papers unless you are sure that all of your rights under the law are protected. If your workplace is unionized, ask your steward or one of your union officers for assistance or to refer you to a reputable Workers' Compensation attorney.
5. Get the names and address of any witnesses who saw your accident.
6. If you need further medical treatment, you must ask your employer to refer you to a physician or hospital. If at some point this physician is unsatisfactory to you, you have the right to select another doctor from a panel of four physicians provided by your employer.
7. REMEMBER: Do not select or go to your own physician without approval, in writing whenever possible, of your employer. If you select and to go your own physician without approval by your employer, you will have to pay all expenses of that doctor's care yourself.
8. If at any time a dispute arises between you and your employer about your rights to Workers' Compensation benefits, your recourse and relief are provided by the Act. Any claim for benefits must be made within a certain time period to preserve your rights.

1. PURPOSE OF THE ACT

The Legislature created the Alabama Workers' Compensation Act ("the Act") to provide the following benefits to Employees who suffered injury or illness that arose out of an in the course of their employment:

1. medical care and rehabilitation;
2. compensation for inability to earn wages; and

3. in the case of death, benefits to the Employee's dependants.

The Act is designed to provide certainty that those who are injured on the job will be compensated. It applies only when the Employee has suffered injury or death by accident on the job, or suffered an occupational disease.

2. EMPLOYERS COVERED BY THE ACT

Most private employers with five or more Employees in any one business are included by the Alabama Workers' Compensation Act. The Act, however, excludes the following employers and Employees:

1. Domestic servants;
2. Farm Employees who employers have not chosen to come under the Act;
3. Casual Employees – employees hired temporarily for a function outside the usual course of the employer's business;
4. Employees not working in the usual course of their employer's business;
5. State Employees and some city and County Employees;
6. Employers with less than five Employees, unless they opt in or unless they engage in on-site construction of single-family detached residential dwellings; and
7. Independent contractors – persons over whom the employer's right of control extends no further than directing what is ultimately to be accomplished. Many workers who are claimed by their employers to be independent contractors are actually employees within the meaning of the Act.

3. INJURIES COVERED UNDER THE ACT

Compensation is due to an Employee for any injury, occupational disease, or death caused by an "accident arising out of and in the course of his employment." Most injuries that occur while an Employee is on duty are compensable. However, there are exceptions to this rule. The major exceptions are where the Employee is (1) intoxicated while working (2) is engaged in "willful misconduct" such as horseplay, or (3) fails to safety regulations or use required safety equipment. The burden of providing that one of these exceptions applies is on the employer.

The definition of “injury” under the Act has been expanded to include cumulative trauma disorders (such as carpal tunnel syndrome) if the disorder arises out of and in the course of employment. Mental or emotional disorders are excluded from the definition unless they are caused by a compensable physical injury.

An Employee may be compensated for an occupational disease related to the Employee’s occupation if the disease arises out of and in the course of his employment.

Examples of “occupational diseases” are lung conditions such as bronchial asthma or chronic bronchitis caused by inhaling dusts or fumes on the job, black lung, silicosis, asbestosis, or brown lung.

Hearing loss caused by occupational noise exposure is compensable under the Act. Some courts have treated occupational hearing loss as an injury, and other courts have treated it as an occupational disease.

An existing heart condition is compensable only if it is aggravated by employment conditions. An example is an electric shock that aggravates a heart valve defect. Injury or death caused by emotional strain is not compensable.

Personal risks, such as those arising out of purely personal conditions such as birth defect or epilepsy, are generally not compensable unless it can be shown that the condition as aggravated by work.

Neutral risks, sometimes called “acts of God,” such as injury or death by a stray bullet, are traditionally seen as risks that everyone assumes and therefore not compensable under the Act. However, many courts today view personal and neutral risks as covered by the Act if some connection between job and the Employee’s injury can be shown.

4. TYPES OF BENEFITS

1. Medical Benefits:

The employer is liable to the Employee for “reasonable” and “necessary” medical treatment resulting from a job-related injury. This liability for medical treatment is limited only by the requirement that it be necessary and reasonable. The employer is also liable for the cost of medical supplies, such as crutches, hearing aides or prescriptions, and other expenses incident to reasonable and necessary medical care. This includes mileage to and from medical and rehabilitation providers at the rate paid by the State for official travel.

If the Employee needs medical treatment because of a work-related injury, the Employee must go to the physician or hospital chosen by the employer. If at some point

this physician is unsatisfactory to the Employee, the Employee has the right to select another doctor from a panel of four physicians provided by the employer.

2. Disability Benefits:

Besides medical benefits, the employer is liable for disability benefits to compensate an Employee for wages lost due to a job-related injury. Unless the injured Employee is permanently and totally disabled, the period he can receive benefits is limited by the Act, and the amount of benefits is limited for all injured Employees. An injured worker is also entitled to vocational disability benefits if the worker suffers a loss earning capacity from a job-related injury.

3. Vocational Rehabilitation Services:

In some circumstances, the employer is also liable for vocational rehabilitation of the injured Employee, including the costs and expenses of such rehabilitation. If an employer offers vocational rehabilitation and the Employee refuses, the Employee risks losing future disability benefits.

5. TYPES OF DISABILITY AND AMOUNT OF BENEFITS

1. **“Temporary Total”** disability occurs when an injury causes total disability – that is, the Employee cannot perform gainful employment – for a limited period.

The amount of compensation available is two-thirds of the injured Employee’s average weekly earnings at the time of the injury, subject to maximum and minimum amounts set by the Act. They are payable until the Employee recovers completely or reaches “maximum medical improvement,” which is the full extent that the Employee can recover given the injury.

Example: John works in a warehouse and makes \$600.00 per week. He hurts his back on the job, and his doctor says he cannot work at all while he recovers. John is entitled to \$400.00 per week in temporary total benefits until the doctor releases him to go back to work: two-thirds of his salary at the time he got hurt.

2. **“Temporary Partial”** disability occurs when an injury causes a partial disability (i.e. a partial loss of ability to earn wages) for a limited period.

To determine the benefits owed to the Employee, the amount by which the Employee’s earning capacity is reduced must be established first. This is accomplished simply by comparing the amount earned **before** injury with the amount earned **after** injury. The amount of compensation available is two-thirds of the difference between what the Employee earned before the injury, for up to 300 weeks, subject to maximum and minimum amounts set by the Act.

Example: Jane works in the same warehouse as John and makes \$600.00 per week. She also hurts her back on the job. While she recovers, however, she can do some of her duties. Her employer agrees that until Jane completely recovers, she only has to answer the warehouse phone, and pays her \$300.00 per week. Jane is also entitled to \$200.00 per week in temporary partial benefits until her back improves: two-thirds of the difference between the \$600.00 she was making at the time she got hurt and the \$300.00 she will earn until she recovers.

3. **“Permanent Partial”** disability occurs when an injury causes an irreparable injury to part of an Employee’s body.

To determine the amount of benefits payable, the degree to which the injury decreases the Employee’s ability to earn wages must be established first. This degree of disability is expressed as a “percentage” of disability. The amount of compensation available is that percentage of two-thirds of the Employee’s average earnings before injury for up to 300 weeks, subject to maximum and minimum amounts set by the Act.

The percentage of permanent disability is based on limitations caused by the Employee’s injury. Employees who return to work making the same wage as when they were injured can only recover permanent disability benefits based on their degree of medical impairment. Employees who cannot return to work making the same wages are entitled to permanent disability benefits based on their loss of ability to earn income, or “vocational disability.” If within 300 weeks from the date of injury a returning Employee is unable to continue performing the job, he or she may then pursue benefits based on vocational disability.

Examples: Once Jane recovers from her back injury, she returns to her job in the warehouse and to her \$600.00 per week salary. She still has some continued pain and a slight loss of motion at her waist, however, Jane’s doctor places some restrictions on the amount of lifting, bending and stooping, she can do. She has a 10% permanent physical impairment. Jane is entitled to draw \$40.00 a week in permanent partial disability benefits: 10% of two-thirds of her wage (\$400.00) at the time she got hurt.

After six months and two surgeries, John recovers to the extent possible, but has lost motion in his back and has two fused disks in his back. The doctor releases John from his care, but restricts John from any bending or stooping at all, sitting or standing for more than 30 minutes at a time, and from all lifting more than five pounds. John cannot ever return to work in the warehouse, but he does find another job that pays him less than \$600.00 per week. Based on the doctor’s testimony about John’s restrictions, and vocational testimony about John’s ability to find and hold a job, John has a 50% permanent disability. John is entitled to \$200.00 a week in permanent partial disability benefits: 50% of two-thirds of his wage (\$400.00) at the time he got hurt.

4. **“Permanent Total”** disability occurs when a worker can no longer perform his former job and is unable to perform reasonably gainful employment. Reasonably

gainful employment is work that is suited to the worker's skills, education and age, and is comparable to the worker's previous work in the areas of compensation and job duties. Permanent Total disability does not require that the Employee be completely helpless.

The amount of compensation available is two-thirds of the average weekly earnings received before injury, subject to maximum and minimum amounts set by the Act. The benefits are payable for life, or until the disability ends.

Examples: Rita, who also works in the warehouse and makes \$400.00 per week, is run over by a forklift and seriously injured. After a year of surgery and treatment she recovers somewhat, but has stringent permanent restricts on her physical abilities. In addition to restrictions on bending, lifting and the like, she can no longer drive, has blurry vision, and can only walk with a cane. Her injuries have caused her to be depressed, as well. In her doctor's opinion, Rita cannot return to any gainful employment. Rita is entitled to \$266.67 a week (two-thirds of her wage at the time of her accident) in permanent total disability benefits for the rest of her life or until she recovers enough to be able to work again.

6. LIMITATIONS ON BENEFITS

For a temporary disability, compensation will begin on the fourth day following the injury. No compensation will be allowed for the first three days of disability, unless the injury lasts for 21 days or longer. For a permanent disability, the compensation period begins on the day after the disabling injury, though and Employee usually will not know that his injury is permanent until the time limits for drawing temporary disability benefits has passed anyway.

As indicated above, the amount of all types of disability benefits is subject to maximum and minimum amounts set by the Act. An Employee eligible for Temporary Partial, Temporary Total or Permanent Total disability benefits will receive no more than 100% of, or no less than 27 ½ % of, the average weekly wage of all Employees in Alabama. The Department of Industrial Relations set these figures on July 1 of every year. For the period of July 1, 2006 to July 1, 2007, the state average weekly wage was \$682.09. The maximum weekly compensation for Employees injured during that year is therefore \$682.00, and the minimum weekly compensation is \$188.00.

An Employee eligible for Permanent Partial disability will receive no more than \$220.00 or 100% of his own average weekly wage, whichever is less. There is no minimum amount of compensation payable for Permanent Partial disability as a result of injury to a non-scheduled member, discussed next.

7. SPECIFIC INJURIES

Injuries to certain parts of the body are called "scheduled injuries" by the Act. To calculate the amount of benefits available, the extent of the loss of use of the injured part

of the body must first be determined. The amount of compensation available is two-thirds of the Employee's average earnings before injury, for the number of weeks established by the Act, subject to the minimum and maximum levels of compensation. If loss of use of the injured part is less than total, the benefits are reduced proportional to the partial loss of use.

The number of weeks for which benefits are payable is set forth as follows:

1. Loss of Thumb.....62 weeks
2. Loss of First Finger.....43 weeks
3. Loss of Second Finger.....31 weeks
4. Loss of Third Finger.....22 weeks
5. Loss of Fourth Finger.....16 weeks
6. Loss of Hand.....170 weeks
7. Loss of Great Toe..... 32 weeks
8. Loss of Toe (other than Great Toe).....11 weeks
9. Loss of Foot.....139 weeks
10. Loss of Arm.....222 weeks
11. Loss of Leg.....200 weeks
12. Loss of Eye.....124 weeks
13. Total Loss of Hearing in
Both Ears.....163 weeks
14. Total Loss of Hearing in
One Ear.....53 weeks
15. Loss of Eye and Leg.....350 weeks
16. Loss of Eye and Arm.....350 weeks
17. Loss of Eye and Hand.....325 weeks
18. Loss of Eye and Foot.....300 weeks
19. Loss of two Arms (not at Shoulder).....400 weeks
20. Loss of two Hands.....400 weeks
21. Loss of two Legs.....400 weeks
22. Loss of two Feet.....400 weeks
23. Loss of one Arm and other Hand.....400 weeks
24. Loss of one Hand and one Foot.....400 weeks
25. Loss of one Leg and other Foot.....400 weeks
26. Loss of one Hand and one Leg.....400 weeks
27. Loss of one Arm and one Foot.....400 weeks
28. Loss of one Arm and one Leg.....400 weeks
29. Serious Disfigurement.....100 weeks

Example: Richard works in a saw mill and earns \$300.00 per week. He loses his first finger in a saw accident. While he is recovering, he receives \$200.00 a week in benefits until he can go back to work (two-thirds of his weekly earnings at time he got hurt). One he recovers, he goes back to work making \$300.00 per weeks. He is also entitled to \$200.00 a week for 43 weeks to compensate him for the loss of his finger.

It is possible that injury to a part of the body listed as a “scheduled member” by the Act may affect other parts of the body, or affect the Employee’s ability to work more than if he had only lost that part of the body. In that case, the injury may be treated as “non-scheduled,” and benefits paid based on vocational disability.

Example: Rhonda also works in the saw mill and earns \$300.00 per week. She loses her entire right hand in an accident on the job. Once she recovers from her injury, however, she cannot return to work at the saw mill. She also continues to have pain that affects her entire body, and the only work she can find is a job taking change at a parking lot, which pays her much less than \$300.00 per week. In the opinion of the doctors and experts she has a 50% permanent disability. Though Rhonda’s injury was to her hand, a “scheduled member” under the Act, because of the effect of the injury she is entitled to benefits for a non-scheduled disability and will receive \$100.00 a week in permanent partial disability benefits: 50% of two-thirds of her earnings at the time she got hurt.

8. OCCUPATIONAL DISEASES

Diseases contracted as a result of employment conditions are compensable injuries, though they are not the result of what is commonly considered an “accident.” The Employee must show that the disease (1) arose out of and in the course of employment; (2) was due to some danger or risk beyond those to which Employees in general are exposed; and (3) was related to the Employee’s occupation. The nature of the employment must cause or aggravate the disease. Benefits are calculated on the same basis as any other non-scheduled injury, except that hearing loss is treated as a scheduled injury. Other common occupational diseases include diseases of the lung such as black lung, brown lung, silicosis and asbestosis.

9. DEATH BENEFITS

If an Employee dies as a result of an accident or injury on the job, his dependents are entitled to recover death benefits. The amount available is based on the number of dependents and the amount of the deceased Employee’s earnings contributed to support these dependents. Dependents also receive funeral benefits of \$3,000. Death benefits end in the event of death or marriage of the dependent.

10. THIRD PARTY LIABILITY

The Act generally provides the exclusive means of compensation for job-related injuries. There are, however, exceptions. When the injuries are caused by a third person (someone other than the employer or Employee), the Employee may bring a personal injury suit against the third party. An Employee may also claim Workers’ Compensation benefits from the employer. If, however, the recovery from the personal injury lawsuit

exceeds the amount of Workers' Compensation benefits owed by the employer, the employer is entitled to reimbursement by the Employee for the amount of benefits.

If some instances, a co-Employee can be held liable as a third party. These specific instances are presented when the Employee is injured as a result of:

1. a co-Employee's intentional acts;
2. intentional removal of a safety guard or device;
3. an intoxicated co-employee; or
4. willful and intentional violation of written safety rules or regulations.

A personal injury action may also exist against the manufacturer of a defective product or equipment that injures the Employee, negligent physician, a property owner, or a motor vehicle operator as a third party.

11. RETURN TO WORK ISSUES

An injured Employee almost always benefits by trying to return to work. When an injured worker attempts to return to work, and he or she is unable to do so on a permanent basis, it is an unsuccessful attempt to return to work. A failed attempt to return to work shows a good faith effort by the injured worker and will usually have a positive effect on a workers' compensation claim.

When an injured worker returns to work at a greater or equal age than the worker's pre-injury wage, his benefits are no longer based on vocational disability. Workers' Compensation benefits are then based only on the physical impairment. Such benefits are paid as permanent partial disability benefits.

The Act provides that once an Employee has received an award based on a physical impairment, if he involuntarily loses his job within 300 weeks from the date of the injury, he may petition the Court within two years after losing his employment for a permanent partial disability rating based on his loss of earning capacity. This provision does not apply if the Employee resigns without good cause, if a labor dispute is the cause of the employment loss, if the Employee engages in misconduct, or if the Employee loses a license or certification required to perform the job.

Many Employees are unaware of the right to reopen their claims later and settle their case for an amount based on the physical impairment. Employers sometimes draft settlement language that waives the Employee's right to reopen the case later for assignment of a vocational impairment rating. Employees must beware of such tactics and protect their right to reopen the case.

12. FEDERAL DISABILITY BENEFITS

If an occupational injury causes an impairment that can be expected to last continuously for twelve months, the injured worker may also qualify for Social Security disability benefits. An award of Social Security disability benefits has no direct effect on the amount of workers' compensation benefits that are payable to an injured worker.

The Social Security Act, however, provides for reductions in Social Security disability benefits if the injured worker receives workers' compensation benefits that exceed a limit determined by the Social Security Administration. Careful drafting of settlement language will reduce the likelihood of an offset of Social Security disability benefits. A workers' compensation attorney will recognize the relationship between workers' compensation and Social Security disability and can help minimize any offset.

In addition to benefits available under the occupational disease provisions of the Alabama Workers' Compensation Act, federal law provides for compensation to coal miners and their dependents if a miner's total respiratory disability or death was caused by black lung disease due to coal mine employment. Federal black lung claims are filed with the U.S. Department of Labor and adjudicated by federal administrative law judges; appeals are filed with the Benefits Review Board. Federal black lung benefits are reduced by the receipt of state workers' compensation benefits.

13. EMPLOYER DEFENSES

An employer may not defend against a claim for Workers' Compensation benefits on the grounds that the Employee's own negligence contributed to the injury. The Employee will be compensated even if his own carelessness caused or contributed. The employer may, however, defend against a Workers' Compensation claim on the following grounds:

1. The injury was caused by the Employee's willful misconduct, intoxication, or willful failure to use safety equipment or follow safety regulations. Intoxication includes being under the influence of alcohol or being impaired by drugs. Subject to certain legal limitations, employers may test injured Employees for drugs or alcohol, and positive tests may prevent an Employee from receiving any Workers' Compensation benefits.

2. The disability is attributable to a disabling condition existing before the injury. The employer is liable only for the amount of disability that would have occurred had the earlier disabling injury or condition not existed. If there is no medical evidence that an Employee's disability is the result of his on-the-job injury, the employer is not liable for Workers' Compensation benefits.

3. The Employee makes a false representation in writing concerning previous claims for compensation. The employer must show a connection between the false representations and the injury.

4. The lawsuit claiming benefits is not filed within the time limitations provided by the Act. In the case of injury by accident, the period is two years after the accident or last payment of disability benefits. If the case of occupational disease, the period is two years from the date of last exposure to the condition that caused the disease. If the employer makes false representations to the Employee, or conceals information from the Employee about his claim, the time limits may be stopped from running. The payment of medical benefits by an employer does not extend the time limits.

5. If a death that is the subject of a claim did not occur within three years after the accident.

6. If the injury was the result of assault by a co-Employee or other person at work but not related to the injured Employee's employment. If the assault is simply the result of anger or ill will, but unrelated to work or some work condition, then it is not compensable under the Act.

7. If the injury results from an "idiopathic fall," such as a result of some personal condition like a heart attack or epilepsy, unrelated to work or some work condition.

8. If the injury results from an accident occurring while an Employee is traveling to and fro work, unless the employer furnishes transportation or the Employee performs work-related service while traveling to work or home. If the traveling can be shown to be in furtherance of the Employee's work, then the injury may be in the course of employment.

9. Employees claiming benefits for cumulative trauma disorders such as carpal tunnel must prove that the condition is work-related by "clear and convincing evidence." This is a higher burden of proof than for other injuries and requires definitive medical evidence that the Employee's job duties caused the injury.

10. If an injured Employee receives benefits from a disability plan or similar plan, paid for by the employer, that provides sick pay, the employer may then offset amounts paid by that plan from the amount of disability benefits owed. For every week that an employer that chooses to continue the salary of an injured Employee, the employer is entitled to offset a week of Workers' Compensation benefits.

14. ATTORNEY FEES

The Workers' Compensation Act sets the amount of fees that attorneys can charge in Workers' Compensation cases. This amount is 15% of disability benefits recovered, and payment is contingent upon obtaining a recovery for the Employee. An attorney may

not receive any fee for recovery of medical benefits. Any costs or expenses incurred in the lawsuit are also the Employee's Responsibility, whether the suit is won or lost, and are not included in the 15% limitation.

15. THE OMBUDSMAN PROGRAM

In 1992, the Alabama Legislature created the Ombudsman Program, under the direction of the Alabama Department of Industrial Relations. The program exists to provide information about Workers' Compensation in Alabama to any person; a toll-free number is provided for Employees, employers, doctors and others to call for assistance. The number is (800) 528-5166.

The Ombudsman is also authorized to mediate disputes over claims for benefits. The mediation is entirely voluntary, it is informal, and it is not binding on either party; no record of testimony is kept. The Ombudsman may, however, assist the parties in reaching some agreement or resolution of disputes, which can then be finalized under the procedures provided by the Act for settling Workers' Compensation cases.

16. QUESTIONS AND ANSWERS

Below are the answers to questions most frequently asked by injured Employees.

QUESTION 1: Can my employer fire me or lay me off if I file for Workers' Compensation?

ANSWER: Alabama law makes it illegal for an employer to discharge an Employee who "instituted or maintained any action" for Workers' Compensation benefits. This law protects any Employee who seeks benefits, even if they have not yet filed a lawsuit. If the Employee proves that the sole reason the employer fired the Employee was because he sought benefits, the employers may be liable for reinstatement, back pay and damages.

QUESTION 2: Am I required to visit the Company's doctor?

ANSWER: Yes; under the Act, the employer is only liable to pay medical benefits for an injured Employee treated by a doctor of the employer's choosing or approved by the employer. If you refuse treatment by the employer's approved doctor, you risk losing your right to claim benefits. If you seek treatment from your own doctor, the employer will not be liable to pay your medical benefits. If you are not satisfied with the treatment provided by the employer's doctor, you have the right to choose another from a list of four other approved by the employer.

QUESTION 3: What should I expect from the Company doctor?

ANSWER: The better doctors all have the same goal – to help the injured worker recover from the injury and return to work as soon as possible, as safely as possible. The Employee should be sure that the doctor understands the Employee’s job duties and that the return to work instructions are specific. The use of restrictions such as “no heavy lifting,” “no prolonged standing” or “light duty” have little meaning for the supervisor and are open to much interpretation. It is very important that the injured worker not exaggerate the effects of his injury or the physical demands of his job.

QUESTION 4: Am I entitled to weekly benefits while I am off work?

ANSWER: Yes; as long as an approved physician certifies to your employer that you are unable to work because of the on-the-job injury, you are entitled to Temporary Total disability benefits. If you can work only part time or do other duties that pay less, you are entitled to Temporary Partial benefits.

QUESTION 5: Am I required to go to court before my case is concluded?

ANSWER: In almost all cases where permanent disability benefits are agreed upon by an Employee and his employer, the court must approve the settlement to insure that it carries out the purposes of the Act. This is true whether the Employee is represented by an attorney or chooses to deal with the employer or insurance carrier directly.

QUESTION 6: Can I require that my employer be responsible for all future medical bills?

ANSWER: Under the Act, the employer is liable for all medical expenses related to your injury, both at the time of the accident and in the future. Final settlements of all claims should provide that no future medical care is necessary, that the cost of future medical care is agreed upon and paid, or that the employer will pay any future medical costs.

QUESTION 7: What are my rights if I have a permanent disability that prevents me from returning to my regular work?

ANSWER: Every permanent disability case is as different as the Employee who is injured. Your rights depend on the type of injury, your job, the opinions of the doctors who treat you, and other considerations that come into play in your specific situation. There are no absolute answers, and only an expert can advise you of exactly what your rights are.

QUESTION 8: Can I draw Social Security Benefits and Workers’ Compensation benefits at the same time?

ANSWER: Yes, if you meet the eligibility requirements of both. The amount of Social Security may be reduced to some extent based on the total amount of income you

are receiving at the time. Nevertheless, it is usually to your advantage to try to draw both types of benefits.

QUESTION 9: The weekly rate I am receiving from the Workers' Compensation benefits is only two-thirds of my regular salary. This isn't fair! Can't I get more?

ANSWER: You are right, it is unfair. As discussed above, however, the amount of benefits is limited by the Act, and those limits in Alabama are low. Until the law can be changed and the benefits improved, an injured Employee is only entitled to what the Act provides.

QUESTION 10: I am not even getting two-thirds of my weekly salary! I made almost \$1200.00 a week at the time I got hurt, but I am only getting \$682.00 a week in benefits – that is only half!

ANSWER: Remember that all the benefit amounts are subject to maximum and minimum amounts set by state law. For the year July 1, 2006 to July 1, 2007, no injured Employee in Alabama can draw more than \$682.00 per week in any type of benefits, regardless what percentage that is.

QUESTION 11: What about drug testing?

ANSWER: The Act entitles employers to make injured Employees submit to drugs and alcohol testing. There are some limitations on this right in some circumstances: employers may have to bargain about drug testing with Employees who have a union, and government employers may be subject to constitutional limitations on testing. The general rule is, however, that Alabama employers have the right to test injured Employees. Employees who test positive after an injury may lose the right to claim benefits.

QUESTION 12: What is the ADA and how does it relate to my on-the-job injury?

ANSWER: The ADA is the Americans with Disabilities Act, which is a federal law that protects person with disabilities from discrimination. The ADA prohibits employers from discriminating against persons who are nevertheless qualified to perform function of a particular job. If your on-the-job injury results in a permanent disability that affects your major life activities, including your ability to work, you may be covered by the ADA and have rights that protect you from being treated differently than before your injury. Neither the ADA nor the Alabama Workers' Compensation Act requires an employer to create a job or light duty work for a disabled Employee, but the ADA does require the employer to accommodate an Employee's disability if the Employee is otherwise qualified.

17. CONCLUSION

This pamphlet is an overview of Alabama's Workers' Compensation Law for informational purposes. It is not intended to be exhaustive or to represent legal advice. If you have questions, speak to an expert. If your workplace is unionized, consult your shop steward or a union officer; if you need further help, ask them to refer you to a reputable Workers' Compensation attorney

---- NOTES ----