

*THE **ABC'S** OF
ALABAMA WORKERS'
COMPENSATION*

Written by:

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FOREWORD

Over the years, I have represented and advised hundreds of hard-working folks who were injured on the job. Most of these folks had very little knowledge of their rights as injured workers. Their lack of knowledge stemmed mostly from a lack of available information. There was no reliable source of information for the injured worker. Moreover, no one was interested in sharing information with these workers regarding their rights. As a result of them not having good information, many of these workers endured unnecessary hardships. Understanding that “knowledge is power,” I set out to level the playing field by drafting a booklet that would give the injured worker information concerning their rights. Clearly, I could not draft a step-by-step manual for the injured worker; that would take thousands of pages. Besides, who would read it?

Instead, I decided to draft a short booklet- one that cut to the chase; one that provided the busy worker with quick answers; one that answered the most common questions that I hear daily.

I pray that this little booklet will be of some help to you.

ABOUT THE AUTHOR

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Do not attempt to substitute the information contained in this booklet for quality legal representation, as this booklet is only a brief summary of select concepts in the area of workers' compensation law. No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.

SO, YOU'VE BEEN INJURED ON THE JOB IN ALABAMA?

If you are reading this booklet, I assume you have either been recently injured on the job or your job requires you to help people who have been injured on the job. There are four important things you should know from the outset.

First, you must treat your on-the-job injury as a **SERIOUS MATTER**. An on-the-job injury is a serious matter that can affect all aspects of your life. Most notably, the pain and frustration from the injury can disrupt your quality of life by preventing or limiting you from enjoying the most basic luxuries of life as you did before the accident. These luxuries can be as simple as performing household chores or enjoying a walk in the park. An on-the-job injury can also put undue stress upon your family's finances. Statistics show that most American families are only a few paychecks away from homelessness. In light of this reality, can you imagine what would happen to your home's finances if you, all of a sudden, stopped receiving a paycheck because you couldn't work due to a disputed on-the-job injury? Not only does an on-the-job injury affect the family's finances, but it also affects the family relationship. Most American divorces are caused by money problems. A sudden loss of income from one partner and the contemporaneous shift in responsibility to another partner creates undue stress in the marital relationship. These problems are very real and very serious. Thus, we must treat them as serious matters.

Second, you need to know that our workers' compensation system represents a **COMPROMISE** between workers and big business. Before 1919, there was no such thing as workers' compensation in Alabama. Back then, if you were injured on the job, you had to sue your employer for negligence (doing something wrong that caused your injury). The good thing about the negligence suit was that you could recover pain, suffering and punitive damages if you won. The bad thing was that there were a lot of rules that made it very hard for you to win. As more workers were injured during Alabama's mining and steel industry explosion in the late 1800s, our state government decided that these rules that made it hard for workers to win negligence suits against their employers were too unfair to workers. The legislators wanted to help the workers. However, the legislators were afraid to simply repeal the rules that made it hard for workers to win, because to do so would make it too easy for injured workers to sue their employers. They thought that a wholesale repeal of these rules would be bad for employers. They wanted to help businesses, too. The legislators needed to compromise. The legislators compromised by adopting the workers' compensation system which was originated in Germany. The system simply said that if a worker was injured on the job, his employer must compensate him, regardless of who caused the accident to occur. In other words, the injured worker no longer had to prove that his employer did something wrong like he had to prove in the old days. This was good for workers. It made it easier for workers to recover. But, the system also strictly limited the amount of money the injured worker would receive as compensation for the injury. This was bad for workers.

As you can now understand, the system is designed to appease both the worker and the employer. The system attempts to accomplish this goal by increasing the worker's chances of recovery while, at the same time, reducing the amount of money that the employer will have to pay to the worker. The system has a very delicate "*balance of power*." At this time, the balance of power has shifted rather dramatically in favor of employers. The way the law has developed and the way the system is administered has had the effect of restricting the amount of money employers have to pay to injured workers, while at the same time, reducing workers' chances of any recovery at all. Each year, bills are introduced in our legislature to further erode worker benefits and to further tilt the balance of power in favor of business.

Third, understand that many within the workers' compensation system will not be sympathetic toward you. Many folks that you will encounter in the workers' compensation system, from the rooter to the tooter, will be sizing you up to see if you are a **PHONY**. The level of their helpfulness to you depends upon whether they *think* you are a phony or not. Problem is, it is oftentimes very difficult to tell a phony from the real deal. Just one phony can cast a tint of suspicion upon 100 legitimate folks. As you travel through the workers' compensation system, you will encounter folks that work in the system who have become jaded from their experiences with phonies. They toss legitimate folks in the same barrel with phony folks and treat everyone like phonies. Just know that everyone will not be sympathetic toward you because you have been injured on the job.

Finally, you must have **REALISTIC EXPECTATIONS** about what the workers' compensation system can do for you. I know you've heard that your Uncle Remus, who lives in Detroit, hurt his back at work ten years ago and got one million dollars. Take it from me: every case has to sit on its own bottom. Moreover, every jurisdiction sits on its own bottom in that every jurisdiction has different laws that affect the value of a case. A case that is worth one million dollars in Michigan may have little value at all in Alabama because of the difference in laws.

You must understand from the outset that you will not get close to getting rich from a workers' compensation case in Alabama. Alabama's workers' compensation benefits are only designed to replace a portion of your lost wages, whether past or future. Thus, if you're not already rich, workers' compensation benefits won't make you rich. At best, workers' compensation benefits serve as a safety net. They won't keep you from falling, but they may keep you from a fiery crash. The benefits can help stabilize your situation and give you a foundation to rebuild. It is only with this expectation and attitude that you will have a positive outlook on your workers' compensation matter.

Now, let's look at Alabama's workers' compensation benefits.

ALABAMA WORKERS' COMPENSATION BENEFITS

There are only four (4) workers' compensation benefits. These benefits are (1) medical treatment, (2) mileage reimbursement, (3) cash money, and (4) job retraining. Let's look a little closer at each one.

Medical Expenses

You are entitled to lifetime medical care for treatment relating to your on-the-job injury. This means that your employer must pay for your medical bills. Medical bills include doctor bills as well as other medical necessities such as medicines, crutches, prostheses, wheelchairs, etc. However, as a general rule, your employer gets to choose your doctor. If you don't like the doctor your company uses, you can ask your company to give you a list of four doctors from which you may choose a new doctor. You only get one chance to choose a new doctor, unless you need surgery; then, you can choose twice.

Mileage

Your employer must pay you the cost of mileage for your visits to and from the doctor. Make sure you keep a running tally of how many miles you travel for each doctor or rehabilitation visit. The amount is calculated by multiplying the number of miles you traveled by the official state rate. For example, if the official state rate for Alabama is \$.38 per mile and you travel 20 miles round-trip to your doctor, your employer owes you mileage pay of (\$.38 x 20) or \$7.60 for each trip you make to your doctor.

Cash Money

There are 3 broad categories of cash money. They are temporary cash, permanent cash, and dependent cash.

Temporary Cash

You should receive temporary cash from your employer when you are temporarily out of work recovering from your injury. When, according to the company doctor, you are simply unable to go to work, you get temporary total cash. This simply means you are temporarily and totally out of work. These payments are 2/3 of your average weekly earnings and should be sent to you on the same schedule as your regular paycheck or as close to it as possible. You will begin to receive payments after you have been off work for 3 days. If you are off work for more than 21 days, then the employer has to pay you for the first 3 days that you missed.

When you, according to the company doctor, are able to go to work, but you can only work part-days or you have to clock out to go to the doctor, you get temporary partial cash. This means you are temporarily and partially out of work. For whatever time you missed from work, you should be paid 2/3 of what you would have made had you stayed at work. These checks should also be paid to you on your regular pay schedule or as close to it as possible.

Permanent Cash

Once you reach the point in your medical treatment where your doctor thinks that your condition has stabilized and that he/she can do no more to change your condition, your doctor will give you a prognosis. If your doctor thinks that you will likely suffer ill effects from your injury for the rest of your life, your doctor will say you have a permanent injury. If you have a permanent injury, you can get permanent cash. The money is designed to compensate you for the loss of earnings that you will likely experience as a result of your injury. I know you're thinking, "Hurry up and tell me how much money I will get." I cannot tell you. There are more peculiar little rules that govern the "how much you get," and "when you get it," as there are golf balls at the driving range. What's important for you to know is that if you have a permanent injury, you're entitled to some permanent cash. Many workers simply think that once they receive temporary cash, they have received all the money to which they are entitled. My goal is to inform you that this may not be true in your case.

Dependent Cash

Tragically, some workers pay the ultimate price when they are killed as a result of an on-the-job accident. When a worker's job contributes to his death, his dependents are entitled to money to compensate the dependents for the loss of their breadwinner. Again, the "how much" depends on the deceased worker's particular circumstances. Just know that if a worker dies on the job, his/her dependents may be entitled to cash benefits. In addition to paying cash benefits to the dependents of the deceased worker, the employer has to pay funeral expenses up to \$3,000.00.

Job Retraining

If you are a "proper candidate," the workers' compensation rules require that your employer pay for you to be retrained. This benefit comes into play when you are unable to return to your regular job because your injury prevents you from doing the same kind of work. The rule recognizes that you will likely lose earning potential due to the fact that you can no longer do the job you were trained to do. The rule requires your employer to pay for you to be retrained to do another job that's equal to your regular job; however, your employer is not required to pay for you to better your station in life through vocational rehabilitation such as obtaining a college degree through vocational rehabilitation when you did not have one prior to your accident.

THE 25 MOST FREQUENTLY ASKED QUESTIONS REGARDING WORKERS' COMPENSATION IN ALABAMA

1. "How much will I get for my pain and suffering?"
2. "My company caused my injury. Can I sue it for negligence?"
3. "My workers' compensation checks are constantly late. What can I do?"
4. "My company doctor is not helping me. What do I do?"
5. "Who is this lady that shows up at my doctor appointments?"
6. "Immediately after my accident, my company put a guard on the machine that injured me. Does that mean anything?"
7. "I went to my own doctor. Does my employer have to pay for it?"
8. "My employer says my statute of limitations has expired. Can I still go to the company doctor?"
9. "No lawyer will take my case. Is there anyone who can help me?"
10. "My supervisor fired me after I was injured on the job. Can he do that?"
11. "I always feel like somebody's watching me. Am I crazy?"
12. "I injured myself at work the other day. I don't think it's a big deal. Should I report it?"
13. "I was injured on the job. Should I hire a lawyer?"
14. "My doctor is talking about MMIs, FCEs and BAWs. Is he speaking English?"
15. "The company doctor has released me back to work, but I know I cannot do my old job. What do I do?"
16. "What if I injured several body parts at once?"
17. "I am satisfied with the company doctor, but the workers' compensation carrier has made an appointment for me to see a new doctor. Should I go?"
18. "The workers' compensation claims adjuster wants me to give a recorded statement. Should I do it?"
19. "What if I re-injured an old football injury; am I still entitled to benefits?"
20. "What if I didn't suffer an accident per se; but rather, suffered an injury from 'wear and tear'?"
21. "My employer doesn't even have workers' compensation insurance. I thought all companies had to have workers' compensation."
22. "What if I was involved in an automobile accident while on the job?"
23. "The company doctor said that I need to have surgery. Do I have to have it?"
24. "Am I entitled to workers' compensation benefits even if I now work for another company?"
25. "Is my job protected while I am out recuperating from my on-the-job injury?"

1. “How much will I get for my pain and suffering?”

Probably the most often repeated question I hear from injured workers is, “How much will I recover for my pain and suffering?” This is a legitimate question, as on-the-job injuries are almost always painful and equally frustrating. However, unlike most personal injury accidents in Alabama (such as auto accidents or slip-and-falls), the law doesn’t allow an injured worker to recover money for pain and suffering in a workers’ compensation case. The money to which you may be entitled as an injured worker (temporary and/or permanent cash) is calculated by the use of formulas. The formulas try to pay you for past loss of wages or estimated loss of wages in the future. However, by law, the formulas do not include compensation for pain, suffering, nor punitive damages. I know this sounds unfair to you. However, when the system was created, the lawmakers tried to balance the competing interests of the business owner and the worker. In exchange for giving up the right to get money for pain and suffering, the worker got other benefits as explained earlier.

2. “My company caused my injury. Can I sue it for negligence?”

I had a client recently who injured her back when she fell at a loading dock. She fell as she attempted to stand on a beam and use a broom to reach up and lower some bay doors. Sounds hazardous, huh? For months she and other employees had complained to her employer to replace the broken chains on the bay doors so that the employees did not have to put themselves in a dangerous position to lower the doors. The employer promised to fix the doors, but did nothing. My client fell one afternoon and guess what? New chains for all bay doors the next day. Like many others, she asked me, “Can I sue my employer for negligence?” The answer is no. When our legislature created the workers’ compensation system in 1919, it passed a rule that said that an employee, injured on the job, cannot sue his employer for negligence. This rule was a part of a trade-off wherein the legislators gave businesses protection from negligence suits but required them to pay workers’ compensation benefits to workers even if the employer did nothing wrong to cause the workers’ injury.

3. “My workers’ compensation checks are constantly late. What can I do?”

Nothing can be more frustrating to an injured worker who is off work recuperating from an on-the-job injury than to go to the mailbox on payday only to find that his temporary cash, workers’ compensation check (technically called TTD) did not come. If this happens to you, there are several things you need to know about temporary cash benefits. First, if you are entitled to temporary cash payments, they are due on the same day that you would have received your regular paycheck or close thereto. Second, the check should be equal to 2/3 of your average weekly income for the last year of employment. Third, if your check is over 30 days late, without good cause, you are entitled to a late fee that is equal to 15% of the late check. Finally, insurers (the folks that cut your workers’ compensation check) are always monitoring your situation to see if you still qualify for temporary cash payments. This means that they have to review your file

every week and authorize payment. If you haven't received payment, it could mean that the insurer has determined that you are no longer entitled to payment or has simply dropped the ball in authorizing payment. If the insurer has dropped the ball on occasion, then I would tell you that, "the squeaky wheel gets the oil." If the insurer drops the ball frequently, then you need to call a lawyer.

4. "My company doctor is not helping me. What do I do?"

If you are injured on the job, you are entitled to go to a doctor chosen by your employer. Your employer must pay the related medical bills of this doctor. If you are receiving treatment now, you probably call this doctor the "company doctor." Very frequently, clients tell me that the company doctor is not helpful, does not appear concerned, does not listen to them, is not ordering the proper testing, is not documenting their complaints, is a flunky for the insurance company, etc. If you are dissatisfied with your doctor, the law gives you a one-shot opportunity to choose another one. You have to request a "panel of four" from your employer. This is a list of four doctors in your geographic area, who are specialists in the area of medicine that you need, who are chosen by your employer, from which you may choose a new doctor. If you are dissatisfied with your current doctor, ask your claims adjuster for a "panel of four." Next, call the most experienced workers' compensation lawyer you can find in your area and seek counsel. These lawyers generally are familiar with most local company doctors in your area and can give you some aid in choosing a new doctor.

If you have exercised your panel option and you still think you are not getting straight answers from the company doctor, you may consider going to a doctor of your own choosing. The law doesn't keep you from going to your own doctor; it only says that under normal circumstances, the company does not have to pay for this unauthorized doctor. I know you're thinking that you can just use your health insurance to go to your own doctor. Be careful in doing so. Most health insurers have exclusions in their insurance policies for on-the-job injuries. If the health insurer discovers that your visit to your own doctor arose out of an on-the-job accident, they may cause you or your doctor problems. It may be worth your while to pay cash for your personal doctor to see you and review the medical records of the company doctor to give you a third opinion. I have, on occasion, used the opinion of a worker's personal doctor to have the company doctor change his mind.

5. "Who is this lady that shows up at my doctor appointments?"

This is a case management nurse. The insurer hires her to help you and to help it. (I say "she" not to be sexist; I have just never seen a male case management nurse.) In the complex injury case, she helps you by coordinating the various medical treatments you need. She helps the claims adjuster by serving as the adjuster's "eyes, ears and hands" in the field. She goes to your doctor appointments and gives the adjuster written reports regarding the status of your treatment. She obtains opinion letters from the doctor regarding issues of concern to the adjuster.

The nurse's dual role has been the cause of great debate in the workers' compensation world. Opponents of case management nurses argue that although the nurse is ethically bound to help you, she is commercially bound to help the insurer that pays her. Opponents argue that the nurse's role, for example, in obtaining written opinions from the doctor that serve the essential function of eliminating your claim or controlling the value of your claim is in conflict with her role of being an advocate of your medical treatment.

The nurse will tell you that she is working for you. She is. But what she may not tell you is that she is working for the insurer, too. Since she's working for you, ensure that she gives you good service. If you're having problems obtaining your medicines, call her. If you don't have transportation to the doctor, call her. If you need a doctor's appointment, call her. She's there to help you. Most importantly, be sure to remind her that you would like to obtain a copy of each written report that she sends to the claims adjuster and all letters that she sends to your doctor. If she's working for you, she will have no problem sending you this information.

6. "Immediately after my accident, my company put a guard on the machine that injured me. Does that mean anything?"

It can mean many things, but several likely things come to mind. First, it could mean that your company never installed the guard when the machine was delivered to the jobsite. If so, your co-worker, whose responsibility it was to install the guard, may be legally responsible for your injury. Also, the company that designed and manufactured the machine may also share some responsibility for not making the guard a permanent fixture of the machine.

Second, this circumstance could mean that one of your co-workers removed the guard from the machine before you were injured. I have seen this circumstance occur when a supervisor removes a guard to increase production or make the inner workings of a machine easier to reach. If this happens, your supervisor may be legally responsible for your injury. Also, the company that designed the machine may share some responsibility in making the guard removable.

Third, if your employer buys or makes a guard to go on the machine after your injury, this could reflect a defectively designed machine. If your employer can see that the machine needs a guard, should not the designers of the machine, who are much more knowledgeable than your employer, have foreseen this need? Accordingly, the company that designed the machine may share some responsibility for failing to incorporate a guard in the design of the machine.

If you've been injured by a machine at work, you need to call a lawyer right away. Do not delay. If you delay, the necessary information may be lost forever. The lawyer needs to inspect the machine and take pictures to document the condition of the machine at the time of your accident.

7. “I went to my own doctor. Does my employer have to pay for it?”

No, but not always. (Isn't the law a slippery snake?) The law says that the employer only has to pay for company doctors. As I explained above, if you are dissatisfied with a company doctor, you can request a list of doctors from the employer from which you can choose a new doctor. The employer has to pay for this new doctor. However, if you get mad and go see a doctor that you picked, then the employer doesn't have to pay for your doctor.

But, (the law has more “butts” than an ashtray at a bar) if the reason you went to your own doctor falls into four exception categories, your employer may still have to pay for your personal doctor bills. There is no need to delve into the exceptions because you'll likely need a lawyer to make any of them stick. An insurer will never voluntarily agree that one of the exceptions applies. Give me a call, and I'll tell you all about them. Point is, know that there are exceptions to the general rule.

8. “My employer says my statute of limitations has expired. Can I still go to the company doctor?”

Yes. There are three things you need to know about this issue. First, a statute of limitations is a rule that sets a certain time period for you to file a lawsuit to enforce your rights. If you don't file a lawsuit to enforce the right by the expiration date, then you are forever barred from doing so. Second, never let an employer or an insurance adjuster tell you that your statute of limitations has expired. Call a lawyer. This area of the law is riddled with exceptions. I once found an exception that extended a worker's statute of limitations by 15 years! Finally and most importantly, know that the workers' compensation statute of limitations does not apply to medical benefits. In other words, there is no statute of limitations applicable to your right to go to the doctor for an on-the-job accident. This right lasts for your entire lifetime.

9. “No lawyer will take my case. Is there anyone who can help me?”

Yes. Did you know that the State of Alabama has a workers' compensation division? There are a group of “master yodas” who work in the workers' compensation division office in Montgomery called Ombudsmen. Their job is to help injured workers and employers resolve disputes regarding on-the-job injuries. They spend most of their time driving around the state of Alabama meeting with workers and employers in cases in litigation trying to resolve them. Thus, they are rarely in their offices. Most of them are not lawyers; however, they do know an awful lot about workers' compensation in Alabama. They do not accept cases; however, they can tell you what your rights are or intervene in a limited way in your matter to try to get your problem solved. The telephone number to the Ombudsmen office in Montgomery is 1-800-528-5166.

10. “My supervisor fired me after I was injured on the job. Can he do that?”

Maybe. First you must know that Alabama is an at-will state. That means that as a general rule, an employer can legally fire you at his will. This means that your supervisor can fire you for no reason at all. He can fire you just because he felt like it. However, there are many exceptions to this rule. One exception is called retaliatory discharge. This exception says that an employer cannot fire you because you sought workers’ compensation benefits. The hard part is determining the “real reason” why you were fired. Obviously, an employer who wants to fire you because of your on-the-job accident is not going to tell you that your on-the-job injury is the reason that you got canned. If they have really retaliated against you, they will, almost always, dress the firing up as something other than a retaliatory firing. Luckily, ducks often quack even while dressed in sheep’s clothing. You have to look at all the facts to see if you’ve really been discharged in retaliation. If any of the following things have happened to you, you may have a claim and you should contact a workers’ compensation lawyer:

1. You were fired shortly after your accident occurred.
2. Your supervisor complained about you being injured on the job, before or after your firing.
3. Your employer didn’t follow its’ own rules in your firing.
4. The reason your employer gave you for your firing is bogus and you can prove it.

11. “I always feel like somebody’s watching me. Am I crazy?”

I do not know if you’re crazy. What I do know is that if you have been seriously injured on the job and you are pursuing your workers’ compensation claim (normally, you’ve already filed suit), a private investigator may be watching you. Why? It is all about credibility. The workers’ compensation insurer knows that your case may very well end up before a judge who will make a final decision as to whether they will have to pay you money. When you tell the judge that your back hurts so bad that you can’t hold little Johnny anymore, the workers’ compensation insurer wants to pull out the video and pictures of you and little Johnny practicing wrestling moves in your front yard. As you can imagine, such a video will seriously hurt your credibility and undermine your case.

Consequently, remember these two things. First, never overreach. Don’t exaggerate. In other words, don’t say your injury is worse than it actually is. Be honest about how it affects you. Many injured workers think that exaggerating will help their case. It will not. The insurer wants you to exaggerate so that they can prove you a liar, thereby discrediting your entire claim. Don’t fall for it. If you can still play with little Johnny, but just can’t play as long as you used to, say so. The judge will have a favorable impression of your willingness to try to continue to do the things you did before the accident. In my experience, it’s not the video that hurt’s the worker’s case; but rather, the worker’s exaggerations regarding how their injury affects them. If you don’t

overreach, any video that the insurer may present to the judge will likely support your testimony and strengthen your credibility instead of tearing it down. I once represented a private investigator who injured himself while on a stakeout of an injured worker. He told me of all the technology and techniques used by private investigators hired by insurance companies to watch injured workers. Believe me, if a professional is watching you, you will not know it. If you exaggerate, your insurer will find out.

12. “I injured myself at work the other day. I don’t think it’s a big deal. Should I report it?”

Yes. I know you think that you’re just a little sore and your pain will go away after a few days of hot baths and rest, but you should put this book down this instant and report your accident to your supervisor. Why, you ask? There are several good reasons. First, until you give notice, you’re not entitled to workers’ compensation benefits. Second, if you wait beyond 90 days to inform your employer, you will be forever barred from receiving workers’ compensation benefits for your injury, unless you have a darn good excuse for waiting. The ever popular excuse that, “I thought it would get better” is not good enough. Finally, the longer you wait to report it, the more likely it is that your employer will not believe you. If your employer does not believe you, your employer will give you grief.

So how do you go about reporting it? I’m so glad you asked! The best thing to do is to put it in writing. Write a letter to your supervisor stating when you were injured, how you were injured, what parts of your body were injured and where you were when you were injured. Also, state in the letter that, “I hereby make a claim for all workers’ compensation benefits available pursuant to the Alabama Workers’ Compensation Act.” Date the letter and sign it. Mail the letter to your supervisor at the company address via certified mail, return receipt requested. Your supervisor will have to sign to get the letter. The U.S. Post Office will send you the card showing your supervisor’s signature. Keep the card in your records. I know it sounds a bit formal; but remember, “business is business.” If this procedure is not your style, then give the original of your letter to your supervisor and keep a copy for yourself. If for whatever reason you cannot write the letter, tell your supervisor the same information as soon as possible and ensure that he/she completes an accident report. Keep a copy of the accident report for your records. I know you don’t think the injury is a big deal now, but if you find out later that your injury is more severe than you thought, you will regret that you didn’t follow my advice.

13. “I was injured on the job. Should I hire a lawyer?”

For various reasons, some injured workers do not hire a lawyer to handle their workers’ compensation matter. Some workers think that they will lose their image as a “company man” if they hire a lawyer to handle their matter based upon the reasoning that hiring a lawyer is an indication of ill will against the company. Some workers think that the system is simple enough that they feel comfortable handling the matter themselves. Others simply don’t want to pay an attorney’s fee. Apart from the fact that I am a lawyer,

I would recommend that an injured worker hire a lawyer to handle the matter for several reasons.

First, simply hiring a lawyer does not indicate any ill will against the company. In fact, most workers' compensation claims, handled by lawyers, are resolved without the necessity for filing a lawsuit. Second, the fact that Alabama authors have written multi-volume books on the subject of Alabama Workers' Compensation Law, in and of itself, indicates that the subject is not a simple matter. Finally, and probably most importantly, an injured worker probably cannot hire a lawyer for any other matter under the legal universe involving a personal injury for an amount less than what a workers' compensation lawyer is allowed to charge. By state law, a workers' compensation lawyer may not earn more than 15% of a worker's recovery in a workers' compensation case. This amount is extremely low. For example, Georgia lawyers earn 25% of a worker's recovery in a workers' compensation case. In contrast, in other personal injury cases, such as automobile accidents or slip-and-fall accidents, Alabama lawyers generally charge from 33% to 50% of the recovery, depending on the stage of the case when it is resolved. In fact, it is this discrepancy in attorney fees that discourages most attorneys from specializing in workers' compensation cases. Accordingly, there are very few attorneys who specialize in workers' compensation law. It is my humble opinion, in light of all the problems that we have discussed regarding the system, the benefits the worker's compensation lawyer provides in negotiating the system and the miniscule cost of attorney fees, that any injured worker should always seek the aid of a workers' compensation lawyer.

14. "My doctor is talking about MMIs, FCEs and BAWs. Is he speaking English?"

Not really. He's speaking an English dialect we call "work comp." Let me translate. Once you have completed your treatment with the company doctor, the doctor will declare that you have reached MMI. This is an abbreviation of the term Maximum Medical Improvement. MMI is the point in time when the doctor feels that your condition has improved as much as it is going to improve. This point in time is important because only when the doctor has done all he can do for you can the doctor give an opinion as to whether you have an injury that's going to plague you for the rest of your life or whether you've recovered 100%.

If your doctor thinks you have an injury that will plague you for the rest of your life (i.e., a permanent injury), then you are entitled to some cash money to compensate you for this fact. In order for us to determine how much cash you're entitled to, we need to quantify how badly you're injured. That's where BAWs and FCEs come into place.

In order to quantify the severity of your injury, your doctor may assign you an impairment rating. This rating seeks to quantify the degree to which your "body as a whole" (BAW) or your injured body part has been permanently, adversely affected as a result of your injury. Physicians use a specialized book that contains a bunch of tables to determine what percentage to assign to your injury.

Another tool your doctor may use to quantify your injury is the FCE. This abbreviation is short for Functional Capacity Exam (FCE). This exam is simply designed to find out what you can and cannot do physically. It will test, among other things, how many pounds you can lift, how long you can stand, how far you can walk, etc. If your doctor thinks this test is necessary, he will likely refer you to a specialist to administer the test.

Basically, the purpose of these tests is to quantify the severity of your injury. This information is used for various different reasons in the workers' compensation process. However, most importantly to you, this information is used to determine how much cash money to which you're entitled. I cannot tell you how to figure out how much cash money you're entitled to; it is just too complicated. But just know this: when you hear your doctor start talking about MMIs, FCEs and BAWs, cash money could be very close by.

15. "The company doctor has released me back to work, but I know I cannot do my old job. What do I do?"

You need to call a workers' compensation lawyer. You probably do not know it, but you are entering a zone that we workers' compensation lawyers call the "Bermuda Triangle." It is a place where numerous state and federal laws intersect to form a sea of sometimes competing benefits. Without a seasoned ship captain, you may likely drown in the Bermuda Triangle. Let me explain further. Your ability or inability to return to work after an on-the-job injury may trigger rights under the Alabama Workers' Compensation Act, The Family Medical Leave Act (FMLA), the Americans With Disabilities Act (ADA), the Alabama Unemployment Compensation Act, the U.S. Social Security Administration, your retirement/pension fund, as well as your short-term or long-term disability policies. Your attempt to obtain one benefit may hinder your ability to pursue another. You need a plan, in light of your particular circumstances, that reconciles these laws in a way that helps you to achieve the best result for you. This could mean requesting a second medical opinion, buying time for you to physically recover from your on-the-job injury, requesting a disability accommodation from your employer, filing suit, etc. You need a lawyer to work with you to develop this plan. In your effort to fix the immediate problem, you may take a position that a lawyer cannot undo at a later time. An ounce of prevention is better than a pound of cure. For example, if your employer tells you that your injury does not qualify for workers' compensation benefits, you may erroneously apply for non-work related, short-term disability benefits in your frantic attempt to quickly replace your income. However, this move may block you from obtaining workers' compensation benefits at a later time. (Just because your employer says you don't qualify doesn't mean you cannot disagree.) In short, you need help in devising a workable plan to ensure your successful return to work.

16. “What if my doctor won’t treat all of my injuries?”

Oftentimes, a worker will injure several body parts in one accident. For instance, after falling down a flight of stairs, you may feel pain in your lower back and right shoulder. However, as you seek treatment, you may find that your doctor is only concentrating on one part of your body (i.e., back) and ignoring your complaints regarding other parts of your body (i.e., shoulder). This is a problem. If your doctor is ignoring your complaints, then he/she is probably not documenting your complaints in your medical records. If **ALL** of your complaints are not in your medical records, the workers’ compensation insurer may argue that those injuries that you are complaining of now are not related to your work accident. The insurer will use the fact that your medical records only reflect your complaints to one portion of your body to support its denial of your claim for benefits for injury to other portions of your body. There are four things you can do to address this problem: First, when you fill out your accident report at work, make sure you list **ALL** of your injuries. Second, if you go to the emergency room after your accident, make sure your nurse and physician treat each injured body part. Third, when you go to the company doctor, ensure that you list all of your injuries on the new patient intake form. Finally, if your company doctor tells you that he/she is focusing just on one body part, do not accept this. Ask your doctor for a referral to another doctor for this injury or ask your employer for a doctor for this injury. Follow up! Do not allow the company doctor, your employer, nor the insurer to put you off on this. The longer you wait to resolve this problem, the greater the resistance you will encounter. If you have followed my advice, but you do not get treatment immediately, call a lawyer.

17. “I am satisfied with the company doctor, but the workers’ compensation carrier has made an appointment for me to see a new doctor. Should I go?”

Probably not. The primary question you need to answer is who “decided” that you need to go to another doctor. If the company doctor decided that you need to go to another doctor, then this is a referral. Your doctor will put it in writing and tell you about it. If you have a written referral from your current doctor to a new one, by all means you need to abide by the referral.

However, if your claims adjuster decides, by herself/himself, that you need to see another doctor, you will want to resist this “unilateral doctor change.” Your adjuster may try to make such a change if they get upset with the company doctor. There are numerous things that the company doctor can do to upset the workers’ compensation insurer. For instance, the doctor may order a series of expensive tests, keep you off work for an extended period of time, or decide that your injury is work-related. If the insurer is not happy with your doctor, the insurer may try to get rid of the doctor. The insurer accomplishes this in two fundamental ways. First, the insurer will write you or call you out of the blue and inform you that it has made an appointment for you with another doctor. Secondly, the insurer may try to convince you that you need a second opinion. Once you go to this new doctor, this doctor becomes your “new” authorized treating physician. At this point, the insurer can keep you from visiting the old doctor by refusing to pay for the visit. The insurer has accomplished what I call a “unilateral doctor change.”

The law says that once the insurer picks the company doctor, it cannot unilaterally change your doctor just because it does not like what your doctor says or does. However, the insurer is not going to tell you that they don't like your doctor anymore. They'll need to use you to get rid of the renegade doctor. Thus, you need to know that you are not required to change doctors. In fact, you should be suspicious of any appointment that an insurer unilaterally makes with a new doctor on your behalf. If you should find yourself in this situation and you like your current company doctor, you should express your desire to stick with your current doctor. Second, you should resist any transfer to a new doctor until such time as you receive a written referral from your current company doctor referring you to a new doctor. If your insurer threatens that it will cut off your benefits if you do not go see the new doctor, you need to call a workers' compensation lawyer.

18. "The workers' compensation claims adjuster wants me to give a recorded statement. Should I do it?"

Not before you talk to a workers' compensation lawyer. As a general rule, adjusters don't take recorded statements from injured workers. A talk with your supervisor and a quick review of the accident report that you complete after an on-the-job accident are usually more than sufficient tools to inform the adjuster of the things he/she needs to know regarding your matter. When a problem arises, the adjuster will call you and ask you for your permission to do a recorded interview. The adjuster will present the interview to you as no big deal; she is simply trying to find out what happened or trying to get some understanding about a confusing part of the accident report. Believe me, the recorded interview is a **VERY BIG** deal. If an adjuster is calling you for a recorded statement, there is a problem. Most of the time, adjusters pursue recorded statements in cases that are on the borderline of being denied. These are cases wherein the adjuster just needs to confirm the facts that will support the adjuster's denial of the case. The adjuster needs for you to establish these facts on tape.

I know you say, "the truth is the truth." I firmly believe this also. However, on a frequent basis, I see folks who admit to things that I know they didn't do or are untrue; I see folks who fail to tell the whole story and leave out important facts; and I see people who appear fuzzy on facts that I know that they know like a book. Some people just cannot handle pressure. Others simply give half-hearted effort because they do not understand the significance of the occasion. If you unravel during your recorded statement by admitting to things that are not true, by failing to tell the adjuster all the important facts, by acting like you don't know the facts or by doing an assortment of other undesirable things, you will kill your case before it begins. Rather than engage a more powerful foe, (i.e. the claims adjuster), you need to retreat and call the cavalry, (i.e. the lawyer). Once you answer the claims adjuster's questions on tape, it is over. Thus, if an adjuster calls you to take a recorded statement, do like Forrest Gump; **RUN FORREST!** Get on the phone and call a workers' compensation lawyer. Many of you will not take my advice. You will reason that you will simply tell the adjuster what you know and everything will be fine. You will remember what I said about this topic when you receive a denial letter from the adjuster.

19. “What if I re-injured an old football injury; am I still entitled to benefits?”

Maybe. Most of us think of a pre-existing injury as simply a previous injury to a portion of our body. On occasion, a worker will come to me explaining that his employer or insurance carrier told him that he is not entitled to workers’ compensation benefits because he had previously injured himself. For example, a worker who already has a back injury may fall at work and make the injury worse. This worker’s employer or insurer may explain to him that he cannot recover benefits for the recent fall at work because he already had a back problem that he suffered previously. This explanation is incorrect for several reasons. First, the bizarre world of workers’ compensation does not use the same definitions of words that we use on earth. For instance, in the world of workers’ compensation, you do not have a pre-existing condition, regardless of how severe your previous injury was, if you were able to perform your regular job prior to your second injury. For example, if the worker who had the back injury could do his regular job without help prior to the fall, then as far as workers’ compensation is concerned, the worker does not have any prior problem. In other words, the fact that you may suffer from a *prior injury* does not mean that you have a *pre-existing condition*.

And what if you do have a pre-existing condition? The fact that you have a pre-existing condition (you needed help to do your job prior to your second injury) does not bar you from receiving benefits. The rules simply require that the court make an assessment of how badly you are injured now in comparison to how badly you were injured before the second accident. If you are worse off now than before your second accident, the court will compensate you based upon how badly your condition has progressed.

20. “What if I didn’t have an accident per se, but suffered an injury from ‘wear and tear’?”

When most people think about being injured on the job, they think of being involved in a sudden event that causes them injury immediately. Examples of this type of accident might involve you falling down, something falling on top of you, etc. The point is that the accident occurs all of a sudden and you get injured all of a sudden. However, many people miss what I call the “wear and tear” injuries. Wear and tear injuries involve a broad range of conditions that do not arise out of one sudden accident. For instance, you may develop carpal tunnel syndrome in your wrists from performing a repetitive job duty. You may contract a disease such as latex allergy from exposure, over time, to latex. You may suffer a heart attack or a stroke from exposure to physically strenuous duties at work. You must be aware that on-the-job injuries come in all colors. Just because your injury occurs as a result of “wear and tear” as opposed to a “sudden event” does not mean you are not entitled to be compensated for your injury. I will tell you that “wear and tear” cases are more difficult to win than “sudden event” cases because it is difficult to prove that your job caused your injury when some of the “wear and tear” on you could very well have occurred outside of the job. Each wear and tear situation must be carefully evaluated on its own merit. You just need to know that wear and tear injuries are on-the-job injuries just as sudden event injuries are on-the-job injuries.

21. “My employer doesn’t even have workers’ compensation insurance. I thought all companies had to provide workers’ compensation benefits.”

Not all employers are required to provide workers’ compensation benefits. Our laws state that certain employers do not have to provide workers’ compensation benefits. These employers can provide benefits if they so choose. Some of the employers who are not required to provide benefits are (1) employers who regularly employ less than five people, (2) cities with less than 2,000 residents (very small cities), (3) the State of Alabama (4) the United States Government, (5) cities with more than 250,000 residents (very large cities) and (6) public school boards. This is not an exhaustive list; however, the list includes most of the employers in which you’re probably interested. Some of these employers can opt into the Alabama workers’ compensation system if they so desire; however, most employers that fall within one of these categories do not opt in. Some of these employers provide what I call “alternative” methods of compensating injured workers. For example, UAB (an agency of the state of Alabama) has its own on-the-job injury system. Most of the “alternative systems” are not nearly as good as the regular Alabama workers’ compensation system.

Sometimes, you will encounter an employer who is required to provide workers’ compensation benefits, but simply fails to purchase workers’ compensation insurance to cover the cost to provide the benefits. If you’re injured on the job, you’ll know if your employer doesn’t have workers’ compensation insurance. Your boss may try to talk you into using your health insurance to go to the doctor. On the other hand, your boss may try to pay your medical bills “out of his pocket.” He’ll assure you that he’s going to take care of everything. However, none of these arrangements normally work. If your employer cannot afford to pay for workers’ compensation insurance, your employer surely cannot afford to pay for your benefits “out of his pocket.” It is a misdemeanor for an employer, who is not exempted, to fail to provide insurance to provide your workers’ compensation benefits. Furthermore, the law allows you to recover double-damages from your employer, if the employer failed to secure workers’ compensation insurance. This means that you are entitled to recover double the cash to which you would have been entitled had your employer had workers’ compensation insurance.

22. “What if I was involved in an automobile accident while on the job?”

An on-the-job automobile accident creates some different issues than your run-of-the-mill work accident. The reason that the automobile accident is different is because it injects several other parties into the mix. For instance, if the driver of another vehicle caused your accident, then the driver as well as the driver’s automobile insurer may become players in your situation. Furthermore, your personal automobile insurer and your employer’s automobile insurer may also become players. If your on-the-job injury involved an automobile accident, then you may have both a workers’ compensation claim and a negligence case at the same time. These are two distinct claims; however, they are very well intertwined by fact and law. Due to the complexity of pursuing both claims at once, as well as the interconnectedness of the claims, I suggest that you call a lawyer for help if you have been involved in an on-the-job auto accident.

23. “The company doctor says that I need to have surgery. Do I have to undergo the surgery?”

No, but be careful. This is a hard question to answer for clients because it involves both legal and medical ramifications. Obviously, the question of whether you *should* undergo surgery for a work-related injury is a medical question that you and your doctor must answer together. Answering this question will probably involve your weighing of many things such as the risks of the surgery, the probable outcome, as well as the length and difficulty of recovery. These are all questions that your doctor must answer. However, many people who would rather deal with their current pain than risk having surgery, often ask me what effect it would have upon their workers’ compensation benefits if they decided, contrary to the company doctor’s recommendation, that they did not want to undergo surgery. This is a touchy issue. There is a rule that states that if you refuse reasonable medical treatment, the insurer can stop paying you workers’ compensation cash. Sometimes, the insurer will tell you that if you do not have the recommended surgery, it will invoke this rule and stop paying you workers’ compensation cash. The insurer generally wants you to undergo a recommended surgery because the surgery usually results in your improved condition and therefore lessens the amount of money it may have to pay you for any permanent injury that remains after the surgery. However, you know your body and know whether you want to take the risk of surgery or not. You don’t feel comfortable being pressured into a surgery that you don’t want by someone who does not have to take the risk of the surgery.

It is these competing interests that caused our court to say that you can refuse any *unreasonable surgery* without risk of losing your workers’ compensation benefits. The million-dollar question is: what is an unreasonable surgery? Our courts look to two things to determine if the surgery is unreasonable. First, the court wants to know if there is a reasonable expectation that you’re going to get better as a result of the surgery. You need to have your doctor answer this question. If your doctor cannot give you high odds that you’re going to get better, then the court is likely to say that you don’t have to undergo the surgery and the insurer cannot cut off your benefits as a result of your refusal to undergo the surgery. Second, the court wants to know how dangerous is the surgery. Again, your doctor needs to answer this question. If the proposed surgery has extreme dangers, such as possibility of paralysis or death, then the court is likely to say that you don’t have to undergo the surgery and the insurer cannot cut off your benefits as a result of your refusal to undergo the surgery.

24. “Am I entitled to workers’ compensation benefits, even if I now work for another company?”

Probably. It is not uncommon for a worker to injure himself while working for one employer and thereafter find work elsewhere. If you are now working a new job, but you’re still experiencing physical problems from an injury you sustained while working for a former employer, you are still entitled to workers’ compensation benefits from your old employer. This means that you’re still entitled to visit the company doctor and receive mileage reimbursement for your drive to and from the doctor, temporary cash

while you're off work at the request of the company doctor and permanent cash if you have a permanent injury. The mere fact that you are now working a new job is not a bar.

You will likely experience some difficulties in obtaining the benefits to which you're entitled. First, your old employer may not understand that, despite the fact that you're no longer working there, it is still on the hook for your benefits. Your old employer may resist out of ignorance. Second, your old employer's insurer may try to shift the responsibility to your new employer by arguing that you suffered a "new" injury after you started your new job. The insurer may resist out of cleverness. However, know that just because you are no longer working for your old employer does not mean that you cannot continue to receive workers' compensation benefits.

25. "Is my job protected while I am out recuperating from my on-the-job injury?"

Maybe. Contrary to popular belief, there is no provision in the Alabama Workers' Compensation Act that says that an employer must protect your job while you are out recuperating from an on-the-job accident. Alabama is an at-will state. This means the employer can terminate you at their will, for a reason or for no reason, even while you are at home recuperating from your on-the-job accident. In recent years, many employers have moved away from the goal of bringing workers back to work on light duty. They have stacks of resumes of healthy workers vying for any opening. Why should they wait for you to recover for six months when there is an eager, able-bodied person virtually standing outside the door ready to replace you today? These employers begin the wheels of the termination machine very early; however, they attempt to do it in a manner which avoids litigation risk. Even though Alabama employers have wide discretion in terminating an employee, this discretion has been traditionally controlled by the risk the company takes when it fires a worker after an on-the-job accident. The sudden firing of a worker after an injury may appear to be retaliation for filing a workers' compensation claim, which could serve as the basis of a separate suit against the company by the worker. However, the fear of a retaliation claim has become less of a deterrent as the courts have made it harder, in recent years, to prevail on such a claim and savvy employers have learned how to avoid the appearance of retaliation. The worker, under certain conditions, might be protected by federal laws (such as the Americans With Disabilities Act and the Family Medical Leave Act) which may give the worker protection against post-injury firing, even when the Alabama laws provide no protection. It is best for an injured worker to hire a workers' compensation attorney soon after the injury so that the attorney can guide the worker through all of the dangerous minefields which the worker is unknowingly traveling.