

# Seven Deadly Sins That Can Destroy Your **PENNSYLVANIA Workers'** **Compensation Case**



**calhoon  
& associates, p.c.**

Trusted Answers • Peace of Mind

**Seven Deadly Sins  
That Can Destroy Your  
PENNSYLVANIA  
Workers' Compensation Case**

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Printed in the United States of America.

ISBN: 978-1-59571-574-6

Word Association Publishers

205 Fifth Avenue

Tarentum, Pennsylvania 15084

[www.wordassociation.com](http://www.wordassociation.com)

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## Why Read this Book?

You are holding this book because you want to make sure you will receive or are receiving all the benefits you are entitled to due to your injury and disability. As Socrates said: “You don’t know what you don’t know.” Congratulations to you for seeking knowledge of your rights. By knowing your rights, you will not be taken advantage of by those who believe it is their duty to minimize your injury, disability, financial recovery and medical coverage. If you think you may need help or have any questions regarding your rights, you can reach us at 1-877-291-WORK (9675).

Some will be pleased to find they are being treated fairly and are not being misled. For many, the opposite will become obvious.



## Acknowledgments and Dedication

This book is written for all injured workers to find peace of mind. The information in this book, like most meaningful things, was created by a great team effort. A heartfelt thanks and gratitude to all of the attorneys at Calhoon & Associates, P.C. (Ron, Steve, Deb and Tom) and the superb professional staff (Shirley, Pam, Diane and Susie) for sharing their ideas based upon many years of serving injured workers.

All profits from the sale of this book (additional copies can be ordered at [www.amazon.com](http://www.amazon.com)) will be donated to Kids' Chance of Pennsylvania which provides educational scholarships to children who have had a parent killed or severely injured while performing work duties.



## What are Workers' Compensation Benefits?

If you are injured due to work or while at work, or, in some cases, while going to or from work, you are entitled to receive workers' compensation benefits. Under the Pennsylvania Workers' Compensation Act, you are entitled to prompt payment of medical bills related to your injury, as well as compensation for loss of income. You are entitled to these benefits regardless of who is at fault for the injury and regardless of any pre-existing condition.

The injury need not be the result of a traumatic incident or accident. You are entitled to benefits for any condition which results from daily, cumulative wear and tear from work duties or from repetitive motion, such as carpal tunnel syndrome, an aggravation of degenerative disc disease or pre-existing arthritis.

You may be entitled to additional monetary damages, regardless of wage loss, for scarring of the face, head or neck which resulted from a work injury or surgery for the work injury. You also may be entitled to additional benefits (called "specific loss benefits") for the loss of use, for practical intents and purposes, of a body part. In most cases, the workers' compensation carrier never advises the injured worker that he is entitled to these and other benefits. Often, benefits are never paid and the statute of limitations

expires before the injured worker discovers he has lost his entitlement to benefits.

When warranted, fifty percent (50%) penalties, attorney fees for unreasonable contest and costs should be pursued. If appropriate, a lump sum settlement of your future wage loss and/or medical benefits may be in your best interest.

Filing a Claim Petition with the Pennsylvania Bureau of Workers' Compensation is NOT the same as filing a lawsuit. Workers' compensation benefits are administered by the Department of Labor and Industry and are governed by statutes, rules and regulations, and a very large body of case law that develops on a monthly basis. Knowledge applied expertly is power. It is our mission to apply that power with passion.

**SIN ONE**

## Failing to Adequately Report Your Injury

Under the Pennsylvania Workers' Compensation Act, you are required to give notice (tell your employer) of your injury AND that it is work-related within 120 days from the date of your injury. Telling anyone at work that you sustained an injury is not enough. There are specific people who must be notified within the company or the insurance company before a claim will be legally recognized.

While you should inform your union steward or representative, you must tell a person in a position of "supervisory authority," namely a line supervisor, a director of nursing, a company nurse or, better yet, the human resource director. If your employer ignores you by refusing to complete an accident report, you should make notes of who you informed, the date you reported the injury and that they refused your request to have an accident report filed.

You then should provide a handwritten note providing notice of the work injury. You may also contact the workers' compensation carrier directly or have an attorney provide formal written notice.

An accident report is a document required by the Department of Labor and Industry to be completed by the employer within fifteen (15) days from the date of your injury. This is true, regardless of the severity of your injury.

Some employees are reluctant to report minor injuries. While it is true that a minor injury usually will not develop into a serious condition, it is not always the case. "I didn't think it was serious or would lead to this" is not an exception to the Workers' Compensation Act's notice requirements. Minor injuries require the same notice as immediately debilitating injuries and, unfortunately, many injuries that initially appear to be minor result in lifelong impairments! While a few narrow exceptions do exist, failure to provide legally sufficient and timely notice of the work injury forever bars a claim for workers' compensation benefits.

Once the accident report is completed, the insurance company has twenty-one (21) days to accept or deny your claim in writing. If they fail to accept or deny your claim within twenty-one (21) days, you should immediately contact an attorney for representation. A simple phone call or letter from an attorney is all that may be needed to prod the insurance company to take their obligation to you seriously. If the insurance company issues a denial, then your private health insurance company is legally required to pay for your treatment during the pendency of your workers' compensation case.

**SIN TWO**

## Treating With the Company Doctor When You Don't Have to— or Longer than Needed

Some employers do not seek to control or limit your choice of who you treat with for your work injury. Others attempt to control this choice, but can attempt to control your choice only during the first ninety (90) days of treatment. Many employers and insurance companies seek doctors who are willing to cooperate with their wishes in return for a steady flow of patients. As a result, too often your health interests become secondary, proper testing is not prescribed to curb costs, you are misdiagnosed and are pressured to return to work when you are not able to physically tolerate the job duties. If you are subjected to this despicable mistreatment, do not treat with the company doctors unless it is financially necessary; get away from them as soon as possible. Failure to treat with the company doctor is not a valid reason to deny a wage loss claim. In addition, too often employers use the ninety (90) day treatment period in conjunction with the issuance of a Temporary Notice of Compensation Payable to cease paying wage loss benefits. This additional control does not apply when a regular Notice of Compensation Payable is issued.

For those employers seeking to control your choices, Pennsylvania law requires the employer to provide several minimum safeguards to protect you. If the employer provides a list of doctors it wishes for an employee to treat with for the first ninety (90) days, the employer must:

Provide a list of at least six (6) health care providers. At least three (3) must be physicians and no more than two may be coordinated care organizations;

Not include on the list any health care provider who is employed, owned or “controlled” by the employer or carrier unless that information is disclosed; and

Provide you with and have you sign a written “Acknowledgment of Rights and Duties” relating to treatment for a work injury both before and after the work injury and a document stating that you are NOT required to treat with only one specific provider. Without these two signed documents, you can treat with whomever you want and the carrier must pay if the treatment is found to be work related. However, if you were presented with the Acknowledgment before and after the injury and refused to sign, it will be treated as if you did sign the Acknowledgment.

If the employer’s provider prescribes surgery, you are entitled to a second opinion with a doctor of your own choosing within or outside the panel list. In all cases, even when surgery is not

recommended, you are always free to switch among providers on the list. If the list does not include a specialist, (for example, a chiropractor), you desire to treat with, you are free to treat with that specialist outside of the list and the carrier must pay if the treatment is found to be work related.

If there is no panel list, you may treat with a doctor of your choosing and the workers' compensation carrier must pay for the work related treatment. If the employer followed all of the rules regarding the Acknowledgement of Rights and Duties and the posting of the list, you may treat with your own doctor at your own expense. If the employer fails to abide by any of the above requirements, the workers' compensation carrier is responsible for payment of your work related treatment during the first ninety (90) days wherever you choose to treat. Regardless of whether or not your employer followed the rules for posting and implementing a panel list of physicians, after ninety (90) days, the workers' compensation carrier is responsible for all reasonable and necessary treatment related to your injury wherever you choose to obtain the treatment. Your treatment options are not even limited to this country.



**SIN THREE**

## Minimizing Your Injuries

Being injured and in pain can be a stressful time in your life. Often during this confusing period after the accident, your pain complaints and treatment may be focused to one area of the body, but with other injured areas possibly mentioned and not treated. All injuries may not have been discussed or, at least, noted at the emergency room visit or subsequent doctor visits due to embarrassment, a stoic demeanor, a desire to protect the employer, or a focus on the primary injury. If all injuries that you believe relate to your work injury were not listed in the initial medical notes, make an appointment with that doctor or another doctor to have him or her examine the other parts of your body. Also, you should tell your employer what you believe to be the initial injuries and what you believe to be part of the entire claim. Inability to have a paper trail documenting all of your injuries could impact what injuries are covered, both for wage loss and medical purposes, with catastrophic unforeseen results.

To help your medical providers to properly document the history of your work injury, you should provide them with a one sentence history they can write down, such as: “On February 2, 2010, I hurt my neck, left shoulder and right knee when I fell down a flight of stairs at work.” Keep it as concise, consistent, accurate and as simple as possible.



**SIN FOUR**

## Minimizing Prior Injuries or Conditions

Once you file a workers' compensation claim, the insurance company is entitled to any and all "relevant medical records" concerning your prior physical condition. The defense will dig into your past to determine whether or not you have sustained a similar injury to the same area of your body. In insurance lingo, there is a system for tracking (known as the "index system") your Social Security number, your name and other injuries you may have had for which you filed an insurance claim. It makes no difference if the claim arose as a result of a medical malpractice action, a motor vehicle action, a slip and fall/civil suit or because of a prior workers' compensation claim. You will be asked about whether or not you sustained any prior injuries to the same area of your body. The defense attorney will not care if the injury was ten years ago, involved entirely different symptoms or medical conditions, required no work loss or lasted only a brief period of time.

So, what do you do to combat this problem? When you first report your injury to a doctor, whether it is your own doctor or the company's treating doctor, you must try to include any and all injuries you have ever had to that area of the body or any areas close to that area of the body. Honesty is the best policy. Your doctor and lawyer have to be aware of prior conditions to determine whether

they are distinguishable from the work injury. Failure to disclose prior conditions to your doctor and attorney will almost always cause you to lose your case. Your attorney will prepare you for testimony regarding your prior problems in the best light, noting relevant differences. Legally, an aggravation of a pre-existing condition, even if prior surgery was performed, is a **NEW COMPENSABLE WORK INJURY**.

**SIN FIVE**

## Minimizing IMEs, Surveillance and Social Media

Every six months, you are likely to be asked by the insurance company to see an “independent” doctor. Do not take these defense medical examinations lightly. The examination is not for the purpose of treating your injuries; it is merely an attempt to solicit a medical-legal opinion to limit the insurance company’s exposure for wage loss and medical benefits. If you wish, we can arrange for a qualified nurse to attend the examination with you on your behalf to fully document the examination or lack thereof. At a minimum, you should document the length of the examination, the tests performed, and what was said by you and the doctor. Do not exaggerate your symptoms or limitations. Treat the defense medical examiner as a friend providing a free second opinion. The best defense against the examination is absolute honesty. Your wage loss benefits are based on a loss of earnings and not on physical incapacity. For example, a concert pianist with a strained finger is totally disabled because the injury is causing a total earnings loss.

On the day of your defense medical examination, there may be surveillance placed on you to determine your level of activity. Usually, the surveillance will occur the day before the independent exam, the day of the independent exam, and the day after the in-

dependent exam. These times for surveillance are not inclusive. You can be put under surveillance at any time and the surveillance tape can be forwarded to a doctor to review, along with his exam. The purpose of the surveillance is to “catch” an injured worker at a level of an activity higher than stated at the time of the examination. Since your wage loss benefits are based upon income loss and not normally based upon total physical inability to perform activities of daily living, surveillance of physical activities is only threatening when you perform a single Herculean act or repetitive activities over a very prolonged period of time. Failure to report income is a crime and a kiss of death to credibility. Insurance companies can also look at your social media sites, such as Facebook, to determine, among other things, your level of activity and earnings. Either shut down these sites or restrict them with privacy controls.

**S I N   S I X**

## Believing the Insurance Company Adjuster and the Insurance Company Nurse are my Friends

After an injury, the insurance company will attempt to contact you. They may appear to be interested and may even ask how you are doing, but do not be fooled. Each and every contact by the insurance company is designed to try to obtain free information to use against you. At some point, they will request from you an authorization that will allow them to either speak with or obtain records from your family or treating doctor. The process by which they are able to do that is by requesting your consent by having you sign a medical authorization or release. These releases, if signed at all, should be modified as narrowly as possible, including a short expiration date.

There may also be a “rehabilitation” nurse or a medical case manager nurse assigned to your case. That person’s job is not unlike the job of the adjuster. Although he or she can appear to be friendly, always remember their paycheck is signed in the lower right hand corner by the insurance company. We discourage the use of these individuals. They are the eyes and ears of the Defendant. They are paid private detectives. They will often “twist your

doctor's arm" to obtain fewer restrictions or no restrictions, even without an examination, to try to reduce your compensation. This often leads to unneeded litigation.

We believe in the injured workers' right to the physician-patient privilege and revoke any prior authorizations signed by our clients. We also ask that our clients not permit insurance company nurses or managers to have any contact with their treating physicians. Being on workers' compensation does not make you a second class citizen needing a babysitter or private detective at your doctor's appointments.

**S I N   S E V E N**

## Not Hiring a Competent and Respected Workers' Compensation Lawyer

Lawyers differ. Hiring the right lawyer makes a difference. Hiring a lawyer who dabbles in workers' compensation or one who churns many cases quickly for pennies on the dollar to make a quick buck is devastating to the value of your case. We often hear defense attorneys laugh when they have a case against those lawyers.

*Here are some steps to take to hire the right lawyer:*

- a) Ask how many years they have devoted their practice to representing injured workers in workers' compensation cases. This, of course, assumes they have devoted their practice to workers' compensation. If you needed surgery, you would rather hire a surgeon who has performed that surgery a thousand times as opposed to a surgeon who has performed one thousand different surgeries one time.
- b) To gauge how hard they are willing to fight for their clients, ask how many workers' compensation cases they have handled and how many cases they have appealed to the Commonwealth Court or to the Supreme Court. Ask how often awards for penalties and attorney fees for unreasonable contest are obtained on behalf of their clients.

- c) Ask yourself if their website and conversations with you are educational.
- d) Research how they are recognized by peers.
- e) Most importantly, get a sense of WHY they have chosen to represent injured workers. Intent affects results.

## Additional Resources

Extensive library of resources and information:  
[www.pa-workers-comp-lawyers.com](http://www.pa-workers-comp-lawyers.com)

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Bureau of Workers' Compensation:  
[www.dli.state.pa.us](http://www.dli.state.pa.us)

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College Scholarships:  
[www.kidschanceofpa.org](http://www.kidschanceofpa.org)

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Facebook:  
[www.facebook.com/pages/calhoon-associates-workers-workers-compensation-attorneys](http://www.facebook.com/pages/calhoon-associates-workers-workers-compensation-attorneys)

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Twitter:  
[www.twitter.com/paworkerscomp](http://www.twitter.com/paworkerscomp)



## Workers' Compensation Rate Schedules

Under the Workers' Compensation Act, injured workers are entitled to wage-loss benefits equal to two-thirds of their average weekly wage. However, there are minimum and maximum adjustments provided in the Act and the benefit rate is set using the annual maximum in place at the time of injury.

The following schedules provide the weekly rates from calendar year 2008 to 2010. When referring to the schedules, read down the column for the calendar year during which the injury occurred.

For example, the maximum weekly compensation rate for calendar year 2010 is \$845.00. The second block represents the weekly compensation rate to be  $66 \frac{2}{3}$  percent of the employee's average weekly wage if the average weekly wage falls between \$1,267.50 and \$633.76.

The third block reflects a weekly compensation rate of \$422.50 if the employee's average weekly wage is between \$633.75 and \$469.44.

The last block is 90 percent of the employee's average weekly wage if his or her average weekly wage is \$469.43 or less.

*Chart appears on following page:*

| <p>Maximum \$807.00<br/>01/01/08</p>                                                                                                         | <p>Maximum \$836.00<br/>01/01/09</p>                                                                                                         | <p>Maximum \$845.00<br/>01/01/10</p>                                                                                                         |
|----------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| <p> <math>\begin{array}{r} \uparrow \\ \\$1,210.50 \\ \hline 66 \frac{2}{3} \% \\ \downarrow \\ \\$605.26 \end{array}</math> </p>            | <p> <math>\begin{array}{r} \uparrow \\ \\$1,254.00 \\ \hline 66 \frac{2}{3} \% \\ \downarrow \\ \\$627.01 \end{array}</math> </p>            | <p> <math>\begin{array}{r} \uparrow \\ \\$1,267.50 \\ \hline 66 \frac{2}{3} \% \\ \downarrow \\ \\$633.76 \end{array}</math> </p>            |
| <p> <math>\begin{array}{r} \uparrow \\ \\$605.25 \\ \hline \\$403.50 \\ \downarrow \\ \\$448.33 \end{array}</math> </p>                      | <p> <math>\begin{array}{r} \uparrow \\ \\$627.00 \\ \hline \\$418.00 \\ \downarrow \\ \\$464.44 \end{array}</math> </p>                      | <p> <math>\begin{array}{r} \uparrow \\ \\$633.75 \\ \hline \\$422.50 \\ \downarrow \\ \\$649.44 \end{array}</math> </p>                      |
| <p>                     or <math>\begin{array}{r} \uparrow \\ \\$448.32 \\ \hline 90 \% \\ \downarrow \\ \text{LESS} \end{array}</math> </p> | <p>                     or <math>\begin{array}{r} \uparrow \\ \\$464.43 \\ \hline 90 \% \\ \downarrow \\ \text{LESS} \end{array}</math> </p> | <p>                     or <math>\begin{array}{r} \uparrow \\ \\$496.43 \\ \hline 90 \% \\ \downarrow \\ \text{LESS} \end{array}</math> </p> |



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## WHY READ THIS BOOK?

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You are holding this book because you want to make sure you will receive or are receiving all the benefits entitled to you due to an injury or disability. At **Calhoon & Associates**, we can help you receive those benefits, regardless of who is at fault for your injury. We'll also help you avoid the "Seven Deadly Sins" so commonly made when filing a Pennsylvania workers' compensation case. For additional information, contact us at 1-877-291-WORK or visit us online at [www.pa-workers-comp-lawyers.com](http://www.pa-workers-comp-lawyers.com).

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\$16.95



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