



Katz, Friedman, Eagle, Eisenstein, Johnson & Bareck, P.C.
77 W. Washington Street
20th Floor
Chicago, IL 60602-2904

Telephone: 312-263-6330
Fax: 312-372-5555
Toll Free in Illinois: 800-444-1525
National Toll Free: 888-626-5556

PRACTICE AREAS

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JANUARY 28, 2010

The civil laws governing the rights of victims injured, whether negligently or intentionally, at the hands of another are complex. Actions for compensation usually have restrictive time frames for asserting a claim and may be limited in the types of damages that may be sought. The law firm of Katz, Friedman, Eagle, Eisenstein & Johnson provides this quick reference guide to give our clients and friends a brief overview of what to expect in pursuing a claim for injuries in Illinois. This is not a comprehensive review of all the rights or limitations available. It should not substitute for the direct advice and consultation of an attorney. The best way to ensure that your rights are protected is through a prompt legal consultation with an attorney who concentrates their practice in this area of the law. Our initial consultations are free of charge and are always confidential. [contact us](#).

Overview of a Personal Injury Case

Personal injury cases for money damages are called civil cases. In Illinois, there are special rules, codes and statutes that govern civil cases. The person bringing a claim is called a plaintiff. The person or entity accused of wrongful conduct is called a defendant.

There are a variety of personal injury cases, much too exhaustive to list here. However, the following is a list of the more common types of personal injury cases, which will be discussed briefly in this guide:

- Work Injuries - Workers' Compensation Act
- Motor Vehicle/Transportation Accidents
- Construction Accidents/Negligence
- Medical Malpractice
- Dog Bite
- Dram Shop/Intoxication
- General Negligence
- Premises Liability
- Products Liability
- Railroad/FELA Farm and Agricultural Accidents
- Boating Accidents



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In some cases, more than one of these categories may be claimed against a defendant or defendants for the same injuries. The claims depend on the facts involved in your case.

For example, if you are injured at work, you are usually entitled to benefits under the Illinois Workers' Compensation Act from your employer. However, you may also have claims against other people or entities that contributed in some fashion to causing your injuries.

Who May be Entitled to Compensation?

Every injured person does not have a right to compensation from someone else. A plaintiff (injured person) has the responsibility (burden) of proving the defendant(s) did something wrong and that the injuries suffered were caused, in part, as a result of what the defendant(s) did or did not do. If the plaintiff is able to prove these elements, he or she will usually be entitled to compensation.

In addition to the physically injured victim, others may have a derivative or a direct right to compensation as well. For example, in cases of a lawfully wedded couple, the law would allow, under most circumstances, for the spouse of the injured victim to receive certain compensation. As another example, in Illinois, the Wrongful Death Act provides compensation for the spouse and next-of-kin of the decedent for their losses such as loss of support, love, affection, and guidance; the Illinois Survival Act provides the Estate to sue for the pre-death injuries suffered by the decedent.

What Are the Types of Damages That May be Claimed?

The types of damages available are provided in specific categories depending on the type of case and a careful analysis of the facts. How much a case is worth is ultimately set by the jury verdict. Whether the offer made before trial is appropriate is usually determined by what the parties believe a jury is likely to do based on the facts and the law of a given case. Depending on the victim's injuries, the legal principles that govern the case, and the jurisdiction where the case is likely to go to trial determine how much an at-fault party should pay to an injured party.



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For example, in a typical motor vehicle case, damages may fall into some or all of the following general categories:

- Medical Expenses - past and those provable in the future
- Lost earnings - past and those provable in the future
- Pain, suffering, mental anguish - past and those provable in the future
- Disability or loss of a normal life
- Disfigurement
- Property Damage

These damages are very different from workers' compensation damages, which are explained later, are limited to:

1. Medical expenses;
2. Temporary total disability; and
3. Permanency.

The laws governing liability and compensation in civil cases are constantly evolving. Our state and federal government are relentlessly bombarded by attempts from insurance companies, big business, and self-interest groups to restrict and limit a victim's rights and entitlement to compensation. These efforts have been successful in some areas. They have led to very restrictive caps on the amount of damages that a victim may be entitled to collect under some actions, even though the injuries are catastrophic and permanent.

In addition to caps on damages, there are some types of cases with statutes that significantly restrict the manner and the procedures for making a claim. For example, in order to file a medical malpractice claim, the claimant must attach to the lawsuit, a report by a medical professional certifying that the claim is reasonable and meritorious. As you may imagine, even in the most egregious cases, there is a reluctance among doctors to complete these reports against other doctors within their medical community. As a result, it is very difficult to obtain these reports in order to file a malpractice suit.

Why Do Some Cases Settle and Others Do Not?

Statistically, approximately 95% of all cases are settled before a verdict. In every case, the ultimate amount of money that an insurance company or



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defendant is willing to pay is usually based on how much a jury would be likely to award. Whether you are handling a matter on your own or hiring an attorney to do so, it is critical to evaluate the factors that affect compensation and to appreciate what the jury would be likely to award. These factors include the jurisdiction in which the case will be brought, the strength of the liability side of the case, whether favorable evidence will be admitted, whether unfavorable facts will be excluded, and what the elements of damage are available to be claimed. In some cases, there may be little choice in making a jurisdictional decision. However, in other cases, there are choices and the amount of compensation might vary considerably depending on the choice made.

A jury only hears what the Court determines is admissible. Jurors are twelve people (six in Federal Court) drawn from the community in which they reside. They are supposed to judge the case on the facts that are admitted in Court, however, their judgment is going to be influenced by their personal background and feelings, as well as the reliability of the plaintiff and his witnesses in testifying.

In Illinois, compensation may be affected by the victim's actions and whether they contributed to the injury. An injured party has the responsibility to have taken precautions to protect their own safety. That means that any verdict may be reduced by the percentage of fault that the jury finds the injured party to have contributed to the accident. However, if the injured party's fault is more than 50%, the cause of his or her injury, then the injured party gets nothing.

What is a Statute of Limitations?

The statute of limitations is an amount of time that a victim has to make a proper claim for damages suffered. The statute of limitations may be straightforward or complicated. It depends upon the facts in a case. What may be an appropriate statute of limitations in one situation may be very different in another, even though the facts appear to be the same.

For example, in Illinois, motor vehicle collisions are generally governed under a negligence statute of limitations which is typically two years from the date of the crash. However, if the victim is a minor, or a disabled person, the statute of limitations might be significantly longer. A minor has two years from the date of his/her 18th birthday to file an action in the court, whereas the adult victim would have only two years from the date of the crash. The statute



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of limitations for the occupants of the same car may vary from two years, potentially up to 19 to 20 years, depending on their ages at the time of the crash. Even within this example, the period may be altered. For example, if the crash involved a municipal defendant or a CTA defendant, the statute of limitations again may in fact be shortened considerably and may have other requirements. A failure to file a claim within the appropriate time period may bar you from asserting any claim at all.

Insurance - Who Pays the Bills?

Medical Bills: Insurance coverage may not always be as straightforward as we often believe it should be. Insurance policies are really contracts between you and the insurance company. Coverage is defined by the terms of your insurance policy, including the fine print!

Sometimes there may be multiple insurance policies that cover personal injuries. Far too often, however, there is no insurance, not even for medical bills.

In a motor vehicle collision, if the parties are insured, usually there is a level of medical payment coverage (for the automobile) which will pay for the driver's and the passenger(s) in which they are riding up to the limits of that coverage only. This coverage generally applies first for all medical bills up to the limit of the medical payment coverage. After that, your group health plan, Medicare, or Medicaid, may apply.

No matter how guilty a party may be in causing injuries to another, there is no requirement that they pay anything, including medical bills, until they are found liable, and the amount is set by a jury.

Even though you have paid for insurance that has covered some or all of your medical bills, most people are unaware of a provision in almost every policy that requires repayment of the medical bills paid if you collect from a defendant for your injuries. If you do not repay the company, they can sue you for the money and they often do. However, this repayment is almost always negotiable. For example, under Illinois law, a reduction of the repayment amount may be made when an attorney is hired by the injured party and it is through the attorney's efforts that the injured party receives an award. The reasoning is that the insurance company is getting money based upon your attorney's work for which a fee was paid - the insurance company should share



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in paying that fee for their portion of the recovery.

Often, injured victims believe that when liability against another party is clear, in other words, the crash was the other person's fault, that the other party must pay for their medical expenses. There is no requirement that a defendant voluntarily pay medical bills, lost earnings, or even property damage until ultimately ordered through a court judgment. Even if a defendant states that they will pay for medical bills or even if they begin paying the bills, they are not required to continue doing so and their payments may not be admitted in Court. The amount insurance pays and whether any insurance is entitled to a reimbursement or a lien, must be determined before a case is resolved; otherwise, you may not be receiving what you should be receiving.

Wage Loss:

Wage loss is compensable damage if you missed time from work because of an injury or for a treatment of an injury, even if your employer paid you for that time. But like medical expenses, only a verdict compels the defendant or his insurance company to pay wage loss. Careful records should be kept regarding missing time because of an injury or for treatment of an injury. Also, like medical expenses, wage loss benefits paid by disability insurance, or some similar type of insurance, must be repaid if the victim collects compensation from the guilty party.

Property Damage:

You are entitled to be compensated for property damage resulting from the wrongful conduct of a guilty party. However, as in the two categories above, payment only becomes compulsory upon a jury verdict, not before. For example, you are stopped at a red light when another driver, talking on a cell phone or changing stations on the radio, crashes into the rear of your vehicle. Your car is "totaled." Clearly, the defendant, or his insurance carrier, should pay to replace your vehicle. Often that happens, but far too often, it does not. There are many horror stories of people not having a car for months or years. Hopefully, you have "comprehensive insurance" for your vehicle. Report the crash to your insurance company and insist that it begin the process of replacing or repairing your car. Do not be led into the trap that the defendant's insurance company should pay only to discover at a later date and after rental



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car bills and storage "charges" for your car have piled up, that nothing has been done and the defendant's insurance company is refusing to pay or will only pay for the car and not the other "charges" which are significant. Your own insurance company will only pay these "charges" for a short period of time.

Insist that both companies immediately address the replacement, repair, car rental charges, and/or storage charges. If the defendant's insurance company refuses, then you will have to pay your deductible, but that stops the other "charges." That puts the burden on your insurance company to collect from the defendant's insurance company payment of the property damage. You may receive the deductible when the claim is resolved between the insurance companies.

Work-Related Injuries

A. Workers' Compensation Act: In almost all employment circumstances, Illinois employees are covered by the Illinois Workers' Compensation and Occupational Diseases Act for claims against their employer which result from injuries while on the job. The Illinois Workers' Compensation Act is a no-fault act. It provides compensation for injuries that "arise out of and in the course of the employment" or for an individual exposed to hazards from occupational diseases without deciding fault. However, the Act prevents workers from any other type of claim against his or her employer. There are certain limited situations where the Workers' Compensation Act does not apply to work-related injuries by statute, or where the conduct of the employer is so egregious and intentional that the Act does not prevent an injured worker from an action directly against the employer. The Workers' Compensation Act has limitations. The Act only provides for medical expenses, "temporary total disability" (partial wages), and "permanent partial disability" (the statutory disability for a particular injury), it does not allow for pain and suffering or full disability. The statute of limitations on the workers' compensation action is generally three years from the date that the injury occurred. Under some types of cases, that time frame may be lengthened. There are certain other requirements in order to file a workers' compensation claim such as notification of the injury to the employer, among other things. B. Workplace Injuries in Addition to the Workers' Compensation Act: In addition to a workers' compensation claim against the employer, some work-related injuries permit actions against other persons or entities called third-parties. A third-party action is a civil action for damages against those parties whose conduct may



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have, in some way, contributed to the worker's injuries. There are a variety of third-party actions. Whether a third-party action may exist bears upon the creativity of the attorney asked to review the case. A simple example of a third-party case would be as follows: A deliveryman for company ABC is making deliveries in Chicago for his company. As he is sitting at a red light at an intersection, his vehicle is rear-ended by a delivery truck driven by an employee of XYZ company. The injured driver, from ABC company, clearly has a worker's compensation claim against his employer, ABC company. However, the injured driver should also have a negligence claim against XYZ company and the driver of the XYZ truck. In addition to motor vehicle third-party cases, other common third-party cases occur in construction related injuries, road work injuries, or cases involving dangerous or defective equipment such as punch presses, trucks, scaffoldings, ladders, or many, many others. The statute of limitations on the third-party action takes on the statute of limitation as if it were a separate compensable action and those rules and statutes that apply in that circumstance as well. In a case where there has been workers' compensation benefits paid to the injured party, you must keep in mind that the workers' compensation insurance company has a lien for a percentage of the benefits paid. Under the statute, the workers' compensation carrier is entitled to 75% of the benefits paid, less their share of the expenses. Depending on the issue of liability in the third-party action, the compensation the injured party may collect will be much greater in the third-party case than what was provided for by the Workers' Compensation Act. In certain occupations, federal or state law preempts a Workers' Compensation Act claim. In those special cases, injured workers are not entitled to pursue workers' compensation claims against the employers, instead, they must pursue statutory actions for their injuries which are more like a third-party action than a workers' compensation suit. For example, some types of occupations where an action may go directly against the employer are in railroad crew member claims, longshoremen claims, crew people on vessels and navigation, as well as certain actions that address seasonal farm labor and seasonal farm labor transport. Some of these actions are discussed under section XI.

Motor Vehicle/Transportation Accidents:

Transportation accidents take into account all forms of public and private transportation of people and goods. The law that applies to these various categories may depend on state law or federal law. Automobile crashes are perhaps the most common case in this category. Generally, automobile



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crashes are governed by the Illinois Motor Vehicle Code and the Rules of the Road. People operating vehicles in Illinois have a duty to exercise reasonable care in the operation of their vehicles for the safety of other motorists and pedestrians on the roadways. When they fail to follow these rules and that results in a crash and injuries, then it is negligence. If you are a passenger in a cab, bus or other conveyance that transports people for a fare, the law imposes a higher degree of care for the safety of the passengers being transported. As previously discussed, depending on the circumstances of the case, various types of insurance apply to motor vehicle crashes. Even though the State of Illinois requires that every automobile be covered by insurance; far too often there is no insurance. Drivers involved in crashes who do not have insurance may lose their driving privileges until they pay the other driver's damages. The law does not excuse the driver who does not know that a motor vehicle is uninsured. In those instances where you may be involved in a crash with an "uninsured" driver, it will be the uninsured provisions of your motor vehicle policy that provide compensation. In instances where the damages claimed are in excess of the guilty party's insurance, the "underinsured" benefits of your policy may provide additional compensation depending upon what those limits are and what you have already collected from the guilty party. It is important to remember that when an insurance company gets involved, the insurance company has experienced adjusters capable and prepared to do what it takes to limit your recovery. The insurance company will also hire attorneys to represent the negligent party. The statements you make to either the adjuster or the negligent party's attorney may be used against you, if and when the matter is attempted to be settled or if it goes to court. You should not speak or give a statement to the other party's insurance adjuster or attorney. You should limit what you say to the other side. If a ticket is issued, that is not indicative of who is at fault for the crash, even if the person pleaded guilty and paid the fine. Usually, if the negligent party has pleaded guilty to the offense in court or has pleaded guilty on the ticket and sent in the fine, it is considered an admission of guilt to negligence. However, that does not mean the injured party automatically wins. If the defendant does not plead guilty, a finding of guilt by a traffic court will not be admissible in a civil case.

Construction Accidents/Negligence

Construction sites are notorious for the dangers associated with the work that must be done. There are all types of machinery engaged in work materials being hoisted, workers exposed to dangerous heights, or in trenches while a



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number of other tasks are going on around them. Construction negligence is a unique form of negligence in that there are often multiple parties who may be responsible for safety on a construction site and, therefore, responsible for compensation to an injured party. The statute of limitations is generally two years, provided the injured individual is engaged in the actual construction or repair of a building at the time of the injury. There may be other factors which shorten or lengthen this time frame.

Medical Malpractice:

One of the most difficult cases to prove is a medical malpractice case. Not only are they complicated, involving technical issues that most of us are unfamiliar with, but often jurors have an unusually high degree of respect for doctors or hospitals providing considerable leeway in determining whether they are guilty of committing malpractice. Unfortunately, by its very nature, medical malpractice cases are cases that often involve catastrophic damages and/or death for the victims. As stated previously in this guide, there are laws that offer medical people such as doctors, nurses, chiropractors, and hospitals far greater protection in cases against them. Unlike almost any other lawsuit, a medical malpractice claim can only be filed if another medical practitioner practicing in the same field of medicine is willing to support the lawsuit. This represents a substantial expense before the case is even filed. Furthermore, it is difficult to obtain medical personnel to review cases and be critical of medical professionals and hospitals in the same locality where they practice. In a medical malpractice case, a medical professional must be willing to state that the doctor, medical practitioner, or hospital violated the "standard of care in this community." The "standard of care" is the care that is reasonably expected to be rendered to a patient in a particular locality under normal circumstances. Therefore, it is usually a very subjective standard. Medical malpractice cases are almost never settled. Statistically, only about one in three cases are successful. For this reason, medical practitioners, as well as the hospitals choose to fight these suits. Therefore, unless the injuries are catastrophic, it is often much too expensive in terms of expert costs, attorney fees, and other court related costs for an injured person who has been hurt at the hands of poor medical care, to file an action, even if it would be successful. The costs and fees associated with pursuing the action may exceed a successful verdict.



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Statutory Claims:

There are numerous claims that are created by a statute or federal code. As we stated earlier, some may involve workplace injuries that preempt the Workers' Compensation Act. In most cases, however, they may offer the injured party far greater rights and compensation. We will discuss only a representative few:

Animal Control Act - Dog Bite: The Animal Control Act specifically deals with actions by injured people who have been injured by the failure of a domestic animal owner to control their animal. A lawsuit under the Animal Control Act is considered a Strict Liability Statute. In other words, if the injured person can show they were peaceably conducting themselves where they were entitled to be and without provocation were attacked and injured by an animal owned or controlled by another, then he or she is entitled to a recovery. There is no need to prove any other fault on anyone else's behalf.

Dram Shop: The term "dram shop" refers to a facility or store that sells or distributes alcoholic beverages to the public. Typically, a dram shop is a liquor store or a bar or restaurant that sells liquor by an individual drink or by container. If a facility serves a person who they know to be intoxicated, they may be liable for injuries caused by that person to third parties. For example, if your vehicle is struck by an individual who is intoxicated, and it can be proven that the intoxication resulted from being over served at a particular restaurant, that restaurant may be responsible to you for damages caused by the intoxicated customer. However, like the medical lobby, the bar and restaurant lobby is very strong as well. The damages are capped at a very low amount, even for the wrongful death of an individual by an intoxicated person. In addition, the statute of limitations is restrictive on a dram shop action.

Railroad Workplace Injuries: There are a number of Federal statutes that are designed to afford greater protection and compensation to workers engaged in most railroad related activities. Which apply may depend on the job being done by the victim at the time or it may depend on the equipment causing the injury.

Farm and Agricultural Workplace Injuries: There are various Federal statutes that were enacted to afford greater protection to most seasonal and migrant agricultural workers, depending on certain requirements. They address not only the work being done, but also the transportation of workers.

Longshoreman, Dock Workers and Shiphands Workplace Injuries: Under the specific requirements of various Federal statutes, certain workers associated with the loading/unloading, maintenance and/or the operation of ships or vessels on navigational waterways have significant remedies available to them. Once again, a victim's rights and claims are dependant on the work being done or the equipment being used at the time of injury.



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General Negligence:

Perhaps the biggest category of cases that may be asserted against a wrongful party is in general negligence. Negligence is defined under the law as the failure to do something which a reasonably careful or prudent person would do under the circumstance or, doing something that a reasonably careful or prudent person would not do under the same or similar circumstances. This conduct takes into account a broad range of potential actions that are too multitudinous to attempt to list. Injuries that result from practical jokes, arrogant conduct, or a general disregard for the rights of another to be free from injurious conduct may be sufficient to assert a claim under a general negligence theory. The statute of limitations varies depending on the facts of the case, particularly when a governmental entity may be involved or causes the wrongful conduct.

Premises Liability:

There are a significant variety of cases that come under the general category of "premises liability" actions. There is a Premises Liability Act in Illinois, which makes the owner of a property responsible for certain actions or inactions that are done on that property which result in injury. As we have previously said, this is not an automatic liability because someone has been hurt on the owner's property. For example, a premises liability action might entail a defect in the parking lot of a store or factory, which causes an injury. However, not every defect is covered. In order to show that a party may be responsible for the defect on the premises, there is a requirement that there be notice to the landowner. Whether the owner knew of should have known of the defect is often a very controversial issue. For example, a grocery store may be liable for a banana peel that a customer slips and falls on, particularly if the banana peel is black and appears to have been there for several hours, however, the store owner will generally not be responsible for a slip and fall on a spill that has just occurred immediately before the customer came to that spot. In that instance, the owner did not have adequate notice to discover and correct the defect. The statute of limitations is generally two years from the date of the injury, but under certain circumstances may be very different. If the injured party is a minor, the statute will be longer. If the party responsible for the injury is a municipal or governmental entity, or the CTA, RTA, the time frame might be much shorter and require additional matters to be filed.



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Product Liability:

We have all heard of people being injured by various products from automobiles to various children's products, to certain medical equipment and pharmaceutical products. The area of the law that deals with this is called Product Liability. The manufacturers and in some occasions the downstream sellers of these products have a duty to make goods that function the way they are intended to function and not to cause injury to the users. These products, in addition to being manufactured and designed safely, in some instances, must also carry warnings that clearly set forth dangerous conditions that are intended by products and their use but not intended to cause injury. Most often these types of claims require expert witnesses who can testify about the defective conditions of the products or the inadequate warnings based upon their experience, knowledge, training and education in that particular area of expertise. The statute of limitations is very complex in product liability cases. The choice of where the matter should be filed is often also very complicated. Also, deciding who are the appropriate parties to file an action against is a very complex matter. In some cases, it's appropriate to bring all the parties in that have been associated with the distribution of the product, and in others it's not appropriate to do that.

Conclusion:

Volumes have been written regarding the various actions available to people injured at the hands of another individual or a corporation. A failure to properly pursue an action in a timely fashion might bar a recovery. Asserting your rights in various jurisdictions might curtail the amount of compensation to which you may be otherwise entitled. Hopefully, this guide has provided a very fundamental overview of some of the rights which an injured party in Illinois may be entitled to receive. It should not substitute for the advice and consultation with an attorney who concentrates their practice in these areas of the law. This guide should only be used as a very general guide and should not be used to determine your ultimate rights in any personal injury action. Rather, you should consult an attorney.¹ Keep in mind that some "natural" illnesses, such as heart attacks or strokes may be brought on by work stresses. If so, valuable benefits are available under this Act.