

# Nevada Workers' Compensation Law Blog

## Work Comp Benefits and Divorce

April 15, 2010 by Virginia Hunt

*I asked Family Law attorney Stacy Rocheleau of Rocheleau Law Group to write a guest blog post for me on workers' compensation benefits and divorce. The Rocheleau Law Group handles divorce, child custody, and guardianship matters and offers a free legal guide. Their website is at [www.rocheleaulaw.com](http://www.rocheleaulaw.com), and phone is (702) 914-0400. This is what Attorney Rocheleau wrote:*

Are you getting a divorce and wondering who will receive the income your spouse received from a work related injury?

This question is often asked and the answer can be complex. Earnings by either party could be community property, so any income received from a work related injury would need to be decided by the court in a divorce. Who receives the income will depend upon how the award is classified.

There are at least four different ways that workers' compensation benefits can be classified:

Treatment as wages. If the payments are designed to replace lost earnings due to a work-related injury, the payments would be characterized as wages. Those payments received during marriage are marital property; those received before or after marriage are individual or separate property.

Treatment as personal injury award. A workers' compensation award could be classified as a personal injury award, on the basis that they are meant to compensate for physical injury rather than lost wages. In that case, the award would then be considered that spouse's separate property.

Treatment as disability pay. In some instances, a wage replacement analysis will be used, but the workers' compensation payments would be treated or classified as disability pay. In that event, any compensation received during marriage is community property and compensation received after marriage is the injured worker's separate property.

Treatment according to when the right was acquired or earned. Even despite a situation where a workers' compensation award will in part or in whole replace post-divorce wages, the award is community property if the right was acquired or earned during the marriage.

Further complicating the analysis is that work related injury benefits, or workers compensation benefits, can be awarded to an employee injured on the job either as a lump sum or in weekly installments.

In Nevada, workers compensation benefits are generally treated as a wage replacement and any payments received during the marriage would be considered community property, unless part of the award is specifically labeled as a personal injury award for disfigurement, pain, or suffering, and then that portion is considered separate property.

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