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# LAW FOR LABOR

## The Essential Step-by-Step Guide to Workers' Compensation

by: Rob Voltz  
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Work related injuries occur in alarming numbers everyday. Workers are often confused about what they need to do when they have been injured and many have little knowledge of how the Workers' Compensation System works. This article provides general guidelines to help you understand the system and the steps to obtaining benefits.



Unmatched experience, command of the law, and genuine concern fuels every client consultation of Lipsitz, Green Workers' Compensation, attorneys.

### 1. Notify your employer of your injury:

- a. Within 30 days if you have suffered an injury as a result of a specific accident or incident; or,
- b. Within two years if you have suffered an occupational disease

The starting point for all Workers' Compensation claims is the date of

the injury. Most injuries are a result of a particular accident with a specific date of injury. In those cases, a worker has 30 days from the date of the accident or incident to notify the employer of the injury.

However, there are also injuries that come on gradually over time due to a repetitive activity or long-term exposure to haz- *Continued on page six.*

### Injured on the job, who can you sue?

by: Richard Weisbeck  
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You are injured at work. Do you have the right to sue anyone for your injuries? The answer is "yes" you can sue a third party – that is, someone other than your employer or a co-worker, who was at fault. Third parties are companies or individuals who cause injury such as:

- Manufacturers and sellers of products that are defectively designed, defectively constructed or which do not contain adequate warnings;
- Operators or owners of motor vehicles involved in an accident;

**"Fifty American workers are injured every minute of the forty-hour work week."**

- Owners who fail to properly maintain their property causing injury to workers who slip and fall or are otherwise injured while on the property;
- Owners and general contractors of property where construction work is being performed;
- Companies selling, installing and supplying asbestos or other hazardous chemicals and products;
- Maintenance companies that have not properly maintained machines or property;

*Continued on page three.*



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### Inside this issue:

- Right to Privacy: New HIPPA regulations on health records. 2
- Labor Limelight: Local labor leaders speak on pressing issues. 4-5
- Essential guide to Workers' Compensation 6-7

### In our Next Issue:

## Increase Your Union's Influence on Local Elections

*With the election season just ended, most Local Unions experienced a flood of requests for political endorsements and funding of their local elections. Local elections can be equally important to the Labor movement as the National elections. In most cases, the Local Union's have to reach out to their Parent Union's Political Action Committee or "PAC", in order to provide funding for local candidates. However, Federal and State Election Law permits a Local Union to establish and maintain its own PAC. Recently, a number of Local Union clients have asked us to establish PAC's for their Local Union. In an effort to help Labor adapt to the changing times, Robert L. Boreanaz will explore in our next issue, how your Local Union can establish and administer its own Political Action Committee.*

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## Know Your Rights, Know the Limitations New HIPAA Privacy Regulations

by: Mark Stulmaker, mstulmaker@lipsitzgreen.com  
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From telephone numbers to bank statements – an increasing number of virtual strangers have access to your personal information without your knowledge or permission. An area that demands perhaps the highest levels of privacy and confidentiality concerns your health records. There are many individuals in the work place who have access to this personal and sensitive material. However, a new law is aimed at limiting this access.

### WHAT ARE YOUR RIGHTS?

“Privacy Regulations” under the Health Insurance Portability and Accountability Act of 1996, otherwise known as “HIPAA,” were finalized by the U.S. Department of Health and Human Services in August 2002. The HIPAA Privacy Regulations are aimed at protecting the confidentiality of patient health information. The goal is to implement enforceable safeguards so that an individual’s private health information is kept confidential at all levels, from the doctor’s office to the health plan. The regulations even prevent distant third party consultants and professional service providers who work with the health plan from gaining access to protected health information. The regulations also provide patients and plan participants the right to know how their information will be handled, the right to control what information is available to what entities, and the right to prevent the use of their health information for any purpose. In addition, health plans have to disclose to participants how participant health information is processed and for what purposes. There are a number of penalties that can be enforced against any entity or individual misusing an individual’s health information.

While most health plans and benefit funds in the area (our clients included) will not have to be in total compliance with the Privacy Regulations until April of 2004, *it is strongly urged that health plans and funds begin preparing themselves and their employees for the required changes.* Preparing for compliance will not be an overnight process, and will most likely require several months of training and preparation.

### WHAT CHANGES HAVE TO BE MADE?

Health plans and their sponsors face a number of new paperwork requirements. Plan documents and summary plan descriptions have to be amended to comply with all the privacy requirements of HIPAA. New contracts have to be created between the plans and the plan professionals, including accountants, at-

torneys, actuaries, consultants and others, to protect the participants’ privacy. The purpose of these “Business Associate Contracts” is to ensure that all other entities, which may happen to see a participant’s protected health information during the course of performing services for the plan, comply with the privacy regulations.

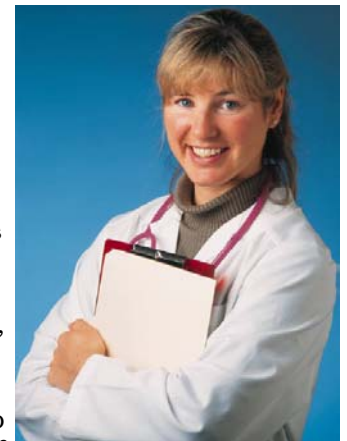
Health plans will also need to implement the use of consent and authorization forms for plan participants and will be required to provide notices to participants advising them of their rights to maintain the privacy of their health and medical information.

Plan sponsors (employers for single employer plans and joint boards for multi-employer plans) will be allowed access to personal health information (PHI) only if group health plan documents are amended to identify which employees have access to the information and for what purpose. Sponsors will have to certify to health plans that they have met this requirement.

Health plans must also adopt and implement a “privacy policy.” The policy must be posted at the fund offices and be available for participants to observe. Employees will have to be trained in the new policies and procedures and comply with their requirements. All employee training will have to be carefully documented and kept on file. Sponsors must establish “firewalls” or physical and procedural barriers to make sure that employees working in both health plan and non-health plan areas are prohibited from using the personal health information improperly.

Finally, a Privacy Officer who is responsible for implementing the health plan’s policy procedures must be designated. This person will be in charge of overseeing the privacy training of employees and the implementation of policy procedures at the health plan office.

Health Plans and Benefit Funds are urged to contact our office with any questions and/or concerns. While initially overwhelming, obtaining an early start in the compliance process will ensure a smooth transition into total HIPAA Privacy compliance.



*You and your doctor know what's on your chart - HIPPA helps to insure no one else does.*

**“A number of penalties will be enforced against any entity which misuses an individual’s health information”**

## Injured on the job, who can you sue?

*Continued from page one.*

- And countless others whose actions or failure to act cause injury to a worker.

More than 100 years ago industrial accidents killed about 35,000 people and injured more than 2,000,000 workers each year. At that time, workers were allowed to sue their employers if the employer was negligent or otherwise failed to provide a safe place to work. But, a worker who was negligent or at fault could not recover any money. Due the huge number of deaths and accidents, Courts were clogged with cases and workers were left without hope. In the late 1800's the Workers' Compensation Laws were enacted, prohibiting workers from suing their employers and in exchange, allowing workers to collect workers' compensation benefits regardless of whether they or their employer was at fault.

Today, workers are entitled to lost wage and medical benefits for work related injuries through the Workers' Compensation System and, although they can not sue their employers or co-workers, they can sue any other person or company at fault.

While the number of deaths and injuries has declined drastically since the turn of the century, approximately 16 people are still killed each day while at work in this country. Operators, fabricators and laborers record the largest number of fatal work injuries each year with truck drivers incurring more workplace fatalities than any other individual occupation. In addition, nearly 50 American workers are injured every minute of the 40-hour workweek. Sta-



*Responsibility for a safe working environment goes well beyond workers and their employer. Several third parties play a key role in the welfare of workers on the job.*

tistics reveal that the manufacturing industry has the highest incidence of injury to its workers.

Employers and workers must be extremely safety conscious to make sure that injury rates continue to decline. However, even if employers and workers take all necessary precautions, they can't control the negligent conduct of third party corporations and individuals who cause worker injuries.

If you have been injured on the job and would like further information concerning your rights, our Personal Injury and Workers' Compensation Attorneys are available to answer your questions. Please contact our Personal Injury Department at 849-1333 ext 348 or our Workers' Compensation Department at 849-1308.

# HELPING INJURED WORKERS FOR OVER HALF A CENTURY

Over the past 50 years, the attorneys at Lipsitz, Green have fought daily battles on behalf of thousands of injured union members. Whether by trial or settlement, our attorneys have forced responsible parties to pay millions of dollars for the injuries they've caused. With 23 Personal Injury and Workers' Compensation Attorneys, our firm pursues all aspects of a claim from suing responsible parties, to obtaining workers' compensation and social security disability benefits. We have also worked hand in hand with labor unions to force changes in the law to improve safety conditions for workers. In the unfortunate event that you are injured at work or through some other accident or incident, our lawyers can be reached at 849-1333.

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# LABOR LI

## SHINING THE LIGHT ON

RICHARD LIPSITZ, JR. SPEAKS ON

### WNY Economic Future • Battling HMO's • The Need to Unite

"Labor Unions are the best organizations for defending working conditions and living standards for working families." So went the opening words passionately asserted by local labor activist, Richard Lipsitz, Jr. These remarks laid the foundation for a conversation with Dick Jr., exploring the pressing union issues of today and the outlook for the future of labor.

#### **Economic development has been slow in Western New York. What are unions doing to help spur economic growth in our area?**

"In 1999, Kevin Donovan, Area Director of the United Auto Workers Region 9 and Phil Wilcox of IBEW Local 97, together with others joined forces to establish the Western New York AFL-CIO Economic Development Group ("EDG"), a not-for-profit organization which focuses on establishing sustainable economic development in the Western New York area. The City of Buffalo has named the EDG as the developer for the Buffalo District Energy Project. In addition, the EDG is leading the formation of a housing rehabilitation effort in the Brounfield Restoration Project. The EDG has been instrumental in leading a community effort to re-license the New York Power Authority at Niagara Falls on a high road economic basis. Through innovative efforts such as these, unions can play a vital role in the economic growth of our area."

#### **The problems of rising healthcare costs seem to invade all unions. Who should be paying for these increases?**

"As anyone who has recently been at the negotiating table knows, we are constantly confronted with skyrocketing healthcare costs and we struggle with employers who seek concessions from the workers. Rather than fight a battle with employers over who should bear the burden of these increasing costs, unions need to direct their attacks at the insurance companies and HMO's. Imagine the bargaining strength if a coalition of unions negotiated healthcare rates on behalf of 25,000, 30,000 or more members! As union members we have the distinct ability to band together and use our combined power to force change. Our proud union history reveals that through such efforts real reforms can occur."

#### **What do you think the future has in store for the labor movement in our area?**

"Unfortunately, the tragic events of September 11 will con-

tinue to be felt for years to come. The vast devastation in New York City will undoubtedly have an impact on the State's revenues in the coming years. I have no doubt that



Richard Lipsitz, Jr. discusses the future of labor with Robert Boreanaz.

the 2003 state budget will feel the pinch of not only the devastation but also the cost of clean-up and rebuilding. As a result, the economy may face even greater challenges than exist today. Labor Unions need to take an active role in helping to establish viable and sustainable jobs. The Economic Development Group provides a good example of positive steps which can be taken when unions band together for common goals.

Weathering the storms ahead can best be accomplished by combining the efforts of all our local unions and their thousands of members who strive to make Western New York a place we are proud to call home."

A special thanks to Dick Lipsitz, Jr. for providing these insights into issues facing unions and their members. Dick recently rejoined the Teamsters as a Business Agent after serving as Director of Labor Programs for the Labor Studies School at Cornell University's Western New York Extension. Dick's first formal leadership role in the Western New York labor community was as president of CSEA Local 303, while working at Roswell Park Cancer Institute. Under the leadership of Tom Dzedzic at Teamsters Local 264, Dick embarked upon a corporate campaign against the parent company of Tops Supermarkets – preserving 1200 area jobs that were facing certain elimination. While in his role at the Teamsters, Dick also spearheaded the initiative Project Care (Career Advancement and Retraining for Education). As the son of renowned labor attorney Richard Lipsitz, Dick early in life realized the importance of the labor movement and has continued his commitment to the causes of working men and women.

An interview by: Robert Boreanaz  
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# MELIGHT

## LOCAL LABOR LEADERS

### The Need For Change

#### AN INTERVIEW WITH PETE MASICH, CO-CHAIRMAN OF WNY WORKER'S COMPENSATION COALITION

Several Local Unions have joined forces to form the Western New York Workers' Compensation Coalition in order to address Workers' Compensation issues facing their members. We recently had the opportunity to speak with Pete Masich, 1<sup>st</sup> Vice President and Compensation Chairman of UAW Local 774 who, along with Keith Williams, Steelworkers, Local 593, are the Co-Chairmen of the Compensation Coalition. The Compensation Coalition has put together an agenda of items it is working to change.

#### Are you aware of any legislative changes that are needed?

*"Jimmy Duncan, our Community Action Program director, came to the coalition and asked us to put together a wish list of things that needed to be changed. We came up with a list of 15 suggestions which we boiled down to five different issues to present.*

*Our first issue is the compensation rate in New York State. It's way below what it should be. The New York State's average weekly wage runs in the area of \$900, yet the maximum comp rate in New York is \$400. That means that anybody who earns more than \$600 per week is not getting their full benefits under workers' compensation. I believe New York is last in the nation when comparing the compensation rate to the state's average weekly wage.*

*We looked at a change in the definition of Total Disability. We want full benefits for employees who are unable to do the work they are employed for. Now, when a carrier has a worker examined by its doctor, they are able to reduce his/her benefits, claiming they can do work, calling it partial disability.*

*We are also pursuing a provision for private carrier payments of medical bills in controverted cases. Most people have insurance. If the comp carrier does not pay for treatment, the carrier will cover it. This moves the process along so people can get treatment faster and get back to work quicker. This is good for the injured worker and good for the employer.*

*Quicker authorization of certain medical payments is*

*also being looked at. Any treatment or exams costing over \$500 have to be authorized by the insurance carrier. We have people who sit out there for months waiting for an MRI or surgery. The carrier should answer these requests within 30 days but we don't see this happening. We are looking to raise this \$500 amount to get our members diagnosed and treated more quickly.*

*We also want to see fee shifting of contested claims. When a claim is contested, we feel that the insurance carrier should have to pay the attorney's fees if the claimant wins. This will reduce the amount of claims that are being controverted and move the cases more quickly through the system."*

#### New York is going through a lot of tough economic times. Won't these changes that are being suggested by your union organization cost employers more money and drive businesses out of state?

*"I believe that other than the rate increase, the other issues that we brought up are common sense issues that any businessman would want. Businesses want people back to work quickly. Injured people don't want to be out of work either. If you take a look at each of these issues, they are common sense, good business decisions that will help our workers get faster medical care and quicker payment of benefits so they can get back to work."*

#### Where would you like to see the Workers' Compensation Law move in the future?

*"I hope in the future we get back to the basics. The original reason for compensation was to take care of an injured worker and not to criminalize an injured worker. Right now it seems like there is more emphasis on the person who is trying to beat the system rather than the person who is legitimately injured. Lets face it. Nobody goes to work with the plan of being injured. They have bills to take care of, kids in school. And all of a sudden, these things are stopped due to an unfortunate injury at work. I think the system should be designed in a way to take care of these people."*

Pete Masich has been helping Autoworkers with Workers' Compensation issues for over 15 years and has an intimate knowledge of how the system works. It was a pleasure to interview Pete, the son of an auto worker, who himself has been in the union for 31 years. His insight and leadership in this field have helped thousands of workers and his pursuit of the legislative changes will help thousands more.



*Pete Masich looks to improve conditions in the Workers' Compensation System*

An interview by: Rob Voltz  
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# Worker's Compensation Guide

Continued from page one.

ardous substances.

This type of injury is called an "occupational disease" and the date of injury used in is generally the date of first treatment for the condition, the date of first lost time because of it, or the date that the worker was first told that the condition was due to the nature of the work. A worker suffering from an occupational disease has two years to inform the employer of the claim.

## 2. File a claim with the Workers' Compensation Board within two years of your injury.

In all Workers' Compensation claims, an injured or ill worker has only two years to file a claim with the Workers' Compensation Board. Failure to meet this requirement may result in the denial of a workers' compensation claim. Many employees mistakenly think that notifying the employer of an injury is enough to secure a claim. However, it is the worker's responsibility to file a claim with the Workers' Compensation Board as well as to give notice to the employer.

## 3. Seek prompt medical care for your injuries or illness.

It is important to seek medical care quickly in order to speed the recovery process and to document your injuries or illness.

a. Uncontroverted claims: an injured worker may go to any doctor licensed to treat Workers' Compensation

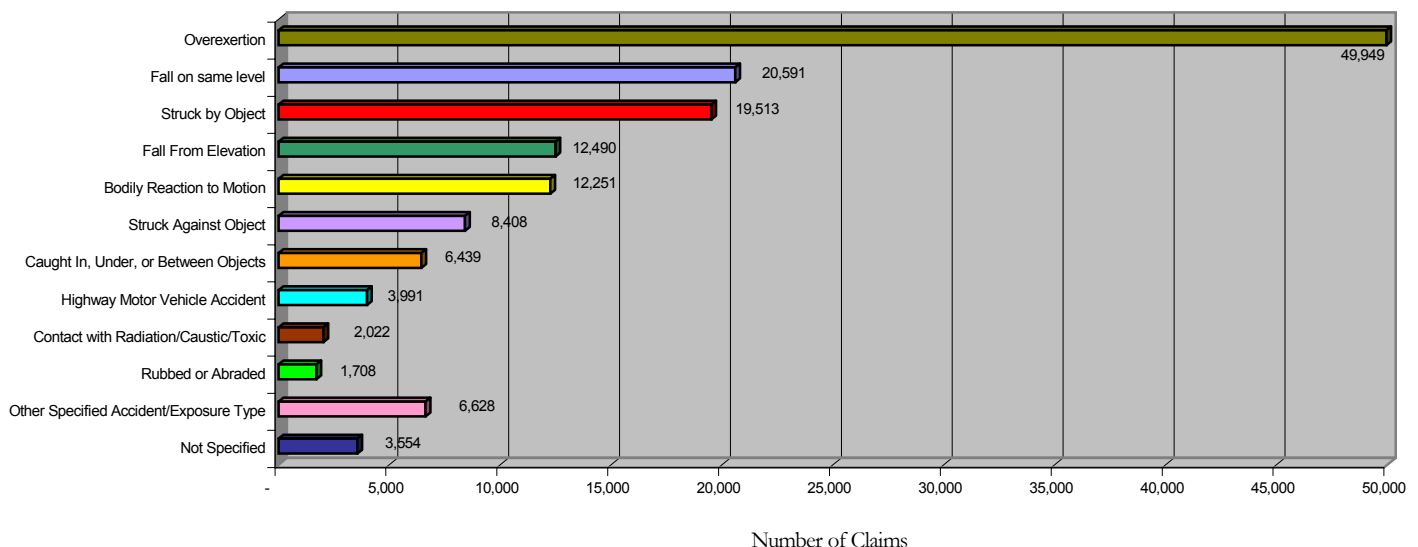
claims in New York and the employer or its carrier must cover the costs of treatment if the claim is not controverted. However, if a doctor wants to prescribe a treatment or diagnostic study that costs more than \$500, (such as an MRI, surgery or physical therapy) the doctor must wait 30 days for the carrier to authorize the treatment before it can be done.

A carrier has the right to have an injured worker examined by its doctor to determine if a treatment is related to the claim or is necessary. Unfortunately, carrier's often delay authorizing medical care for longer than 30 days and there is little an injured worker can do without getting a hearing before a Workers' Compensation Law Judge.

Prompt medical care is also necessary to support a claim for lost time. An injured worker cannot get paid for lost time unless a medical report states that the employee cannot work due to the work related injury or illness. If a worker will be off work for an extended period of time, it is also important for the medical reports to document the worker's level of disability every 30 to 45 days. Without this, an insurance carrier may reduce a worker's compensation benefits.

Controverted claims: If an employer or carrier challenges a claim it does not have to pay for medical care until the Workers' Compensation Board establishes the case as compensable. During this time, the health care provider should not bill the claimant for treatment. Instead, the provider can bill

## Type of Accident or Exposure for New York State Claims in 2001



Source: NYS Workers' Compensation Board Office of MIS/Research.

the worker's private health insurer (Univera, Community Blue, etc.), and the compensation carrier will reimburse the private insurer if the claim is successfully established. The health care provider can also have the injured worker sign a document promising to pay for services if the claim is discontinued or not established.

#### 4. What if you have no lost time from work?

If an injured worker is not losing any time or suffering any reduced earnings due to the injury, the claim will be monitored by the Workers' Compensation Board to ensure that medical bills are not being controverted. Usually, the Workers' Compensation Board will not conduct a hearing and instead will issue an administrative decision stating that the claim is established and indicating: "No further action". This allows a worker to obtain medical treatment related to the injury.

**"The Workers' Compensation System can present many challenges to an injured worker"**

#### 5. What if you have missed work because of your injury?

If a person is off work for less than one week due to an injury, no compensation is payable. When a worker loses more than one week of time, part or all of that lost time may be compensable. These benefits equal two-thirds of the average weekly wage of the worker up to a maximum \$400 per week. When the employer or carrier is controverting a claim it must file a notice of controversy within specific time limits. If a carrier or employer does not follow the rules, penalties can be imposed.

#### 6. When will you get a hearing and what will take place?

If a claim is controverted the Workers' Compensation Board will generally schedule a hearing soon after receiving the notice of controversy. Claims where a worker is losing time from work or needs surgery have a higher priority than other claims.

Workers' Compensation cases are usually re-

solved with a series of short hearings before an Administrative Law Judge. It is very rare that a claim is resolved in one long trial. Hearings are often a few months apart and thus, it can take some time before every issue is resolved.

During this time, the injured worker may be entitled to New York State disability benefits, which are capped at \$170.00 per week. Many unions have supplemental disability benefits policies in their collective bargaining agreements that provide a financial safety net for an injured worker until the compensation case is decided. If the claim for lost wages is successful, the disability benefits are usually repaid to the disability carrier first and then to the injured worker.

Even after a claim is established, there may be multiple hearings where a carrier attempts to reduce the amount of benefits a worker is getting each week.

There also may be hearings because a carrier refuses to authorize medical treatment requested by a worker's doctor.

Finally, in certain cases an injured worker is entitled to either a lump sum award or permanent weekly compensation benefits. If a worker has suffered a permanent restriction in work activities, a permanent restriction in or loss of the use of a body part or limb, loss of eye sight or hearing, disfigurement to the face, head or neck or various other conditions - significant financial benefits may be available.

#### 7. Should you hire an attorney?

The Workers' Compensation System can present many challenges to an injured worker. An attorney will fight to obtain all the benefits to which you are entitled. Lost wages, medical benefits, permanency awards, social security disability benefits, private disability benefits, lawsuits against responsible parties and more are available for injured workers. If you would like our help, please contact our Workers' Compensation Department at 849-1308.

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