WHAT EVERY INJURED WORKER SHOULD KNOW

THE ULTIMATE MISSOURI WORK COMP BOOK
SECOND EDITION

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For Emma and Eli
Schultz & Myers Law Firm is different.

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We promise that if yours is a claim for which you would be better off without the intervention of an attorney, we will tell you! We will educate you as best we can and let you take the reins. With a bit of knowledge, most of which I have included in this book, you can file and pursue many worker’s compensation claims by yourself.

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On the other hand, if you genuinely need help, and yours is a case that meets our stringent criteria, be assured that you will receive personal attention. You will have aggressive representation, regular status updates, and the best legal advice possible when the time comes to decide whether you should settle your case or go to hearing.

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Together, as a team, we decide on the best course of action for your case.

-JOSH MYERS

SCHULTZ & MYERS, LLC
ABOUT THE AUTHOR

Josh Myers is an accomplished attorney and counselor at law licensed in Missouri, Illinois and Arkansas. Headquartered in St. Louis, Missouri, his practice is exclusively focused on plaintiff’s personal injury and worker’s compensation cases.

He attended the prestigious Washington University, one of the nation’s premier law schools. He established himself as a bright and tenacious student. Graduating in the top third of his class garnered him an invitation to join Who’s Who Among America’s Law Students.

Josh knew early on that his passion for law was centered on trial work. Throughout law school, he focused his studies on litigation. In fact, during this third year, he was invited to join Washington University’s nationally renowned mock trial team coached by St. Louis City Circuit Court Judge, the Honorable Judge David Mason. During graduation ceremonies, he was bestowed an induction into the Order of the Barristers in recognition for his outstanding trial skills.

From day one, Josh has refused to represent insurance companies. He always has and always will represent injured people, exclusively. Throughout his career, he has become a member of numerous organizations dedicated to protecting individuals, including the Missouri Association of Trial Attorneys, the American Association for Justice, the
Bar Association of Metropolitan St. Louis, the Missouri Bar, the Illinois Bar and the Arkansas Bar.

Josh has represented people with every degree of injury. He’s become an expert in soft-tissue injuries, catastrophic brain injury and everything between. He is an experienced trial attorney in jury cases as well as worker’s compensation cases.

For more information about Josh Myers and Schultz & Myers, LLC, or to contact Josh via live chat, visit www.SchultzMyers.com. Or, call him at 314-444-4444. You may also reach him via email at Josh@SchultzMyers.com
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CHAPTER 1

THE PURPOSE OF THIS BOOK

As a busy husband, father, attorney and small business owner, I have been asked countless times: why am I investing my time in writing this book? The answer is simple – POWER!!! Knowledge is power.

At the end of 2005, the Missouri legislature pushed through sweeping reforms of Missouri’s worker’s compensation system. They were touted as a blessing for the worker and for injured parties as a whole. But these reforms have only led to more abuse of the injured workers, the people they explicitly promised to protect. The current Missouri system is more restrictive and anti-worker than it has been in decades. In fact, the true beneficiaries of this ‘Tort Reform,’ as its commonly referred to, are the lobbyists who pushed it through and the insurance companies who paid them. Injured workers have to fight harder than ever to recover what they are entitled to.

Many workers think that the benefits they receive as part of Work Comp settlement come right out of the profits of their employer. This perception is the direct result of the misinformation that insurance companies spent millions to promote and bent over backward to cram down the throats of Missouri workers. This belief is just plain wrong! In fact, very few employers pay for their injured
workers’ medical care and disability settlements directly out of the company coffers.

Some companies, usually only HUGE ones, choose to self-insure. But most do not. Instead, to protect themselves from unexpected business expenses, (like payments to employees for work related injuries) they hire an insurance company.

When you file a Worker’s Compensation claim, it is the insurance company that calls the shots. They can and will do everything in their power to limit the amount of money they pay you. Why? Because the insurance industry is a billion-dollar industry, and they don’t make all that money by giving it away.

That brings us back to the purpose of this book. The most dangerous weapon the insurance companies have is your ignorance. They want you under-educated and misinformed. If you don’t know how the system works, what you’re entitled to, or your legal rights, then they don’t have to pay you!

My hope is that this book will help swing the balance of power away from insurance companies and back where it belongs: in the hands of injured people. If this book convinces you to consult with a lawyer or educates you to the point that you can represent yourself, I’ve achieved my goal. This book will teach you how the system works. It will give you the knowledge you need to advocate for yourself in a Worker’s Compensation claim. And knowledge is POWER!!!
CHAPTER 2

FREQUENTLY ASKED QUESTIONS

Throughout the years that I have been practicing Worker’s Compensation Law, these questions come up time and time again. I’ve compiled them into an FAQ for your quick reference. If you need further explanation on any of these topics, keep reading, or better yet, call my office to discuss your case for free.

Question:

Should I settle my case without the assistance of an experienced worker’s compensation lawyer?

Answer:

The short answer is NO. If you hire an attorney, two things will happen. You will be treated more fairly by the insurance company and you will recover more money.

Yes, the purpose of this book is to educate you about the system. There are a few circumstances that might make it better to handle a case on your own. But let an experienced work comp attorney tell you that. More times than not, hiring an attorney is a critical move. Make sure your attorney is well respected among their peers, has recognition in their field, and has a passion for litigation and trial.
The reputation of your attorney is pure leverage in negotiating a fair settlement. Recent studies found that workers with adequate representation recovered nearly 50% more than unrepresented workers.

**Question:**

**When should I hire a lawyer?**

**Answer:**

Immediately. If you want to truly understand why, keep reading!

**Question:**

**I was hurt a long time ago at work. Is it too late to hire a lawyer?**

**Answer:**

If your injury occurred within the last three years AND you never received a lump-sum disability payment, you should consult a lawyer immediately.

**Question:**

**Am I entitled to a jury trial?**
Answer:

No. There are no juries under the workers compensation system. The case is decided by an Administrative Law Judge (ALJ) during a very informal procedure.

Question:

Am I entitled to any benefits even if the injury was my fault?

Answer:

Yes. Worker’s Compensation is a no-fault system. This means that you are entitled to the same benefits regardless of who is at fault for your accident.

Question:

How long do I have to be employed before I am entitled to workers’ compensation benefits?

Answer:

There is no requirement. Even if you are injured on your first day at a new employer, you are entitled to pursue the full spectrum of work comp benefits.
Question:

Is it necessary for the accident to have occurred in Missouri?

Answer:

No. It doesn’t matter where your accident occurred as long as your work normally takes place in Missouri.

Question:

Should I tell my employer I was hurt on the job?

Answer:

Yes, tell them immediately and get written documentation of the report.

Question:

Can I pick my own doctor?

Answer:

If you want your medical treatment paid for through the work comp system, you must treat with work comp approved doctors. Your employer gets to choose the doctor. You can go to your own doctor, but you will be responsible for payment, and most
health insurance plans do not pay for work related injuries. If you choose your own doctor, count on paying those bills out of pocket.

**Question:**

*Do I have to live in St. Louis to hire you?*

**Answer:**

No. I represent clients throughout all of Missouri, Illinois and Arkansas. Occasionally, I partner up with an attorney closer to your town. I do this only with your consent, and depending on the specifics of your case and your proximity to my office. Together, we make decisions in your best interest. This does NOT add any cost to the attorney’s fee.

**Question:**

*Are you expensive to hire?*

**Answer:**

No. I do not bill by the hour and you do not have to pay any retainer to hire me. After we have received your settlement, my fee is 25%. If we do not recover anything (and this has never happened), there is no attorney fee.
Question:

How much does an initial consultation cost?

Answer:

Consultations are completely free and you are under no obligation to hire me.

Question:

How long will it take to reach a settlement?

Answer:

I put this question here because everyone wants to know the answer. Unfortunately, it is impossible to answer without further information on your case. Contact me (it’s always free) to discuss the matter.
Missouri first implemented its worker’s compensation program in – blah, blah, blah. Let’s be honest, you don’t care. This is not the type of knowledge that will make any difference in the struggle for power with the insurance companies.

If there is one historical event that might make any difference to you or me, it happened on August 28, 2005. On this date, the Missouri legislature (and the insurance company lobbyists behind it) enacted their sweeping reforms, all but destroying the rights of Missouri’s injured workers.

I’ll describe some of these changes in greater detail later in this book. Understand now, though, you need to be completely aware that politicians, the insurance industry and the well paid lobbyists in their pockets have been hard at work to destroy your rights and fill their coffers. It won’t be long before more issues are on the ballot again. Don’t let them take away any more of your legal rights!
CHAPTER 4

WORKER’S COMPENSATION CASES ARE DIFFERENT THAN CIVIL CASES

Compared to the civil cases resulting from things like car accidents or dog bites, worker’s compensation claims are a whole different animal. In a civil case, you can be compensated for your medical bills, time off work, damage to your property, and your pain and suffering.

In some civil cases, you can even seek additional money to punish someone for their bad behavior, such as if you’re struck by an intoxicated driver. If a lawsuit needs to be filed, it’s done through the court system and a jury usually hears the case. In civil cases you must prove that someone else caused your injury with their negligent and irresponsible actions.

Conversely, Worker’s Compensation cases are much different because it is based on a no-fault system. This means it doesn’t matter whether you were injured due to some fault of your employer or your own. It means that if you were injured on the job, you are entitled to pursue benefits under Missouri’s Worker’s Compensation laws.
CHAPTER 5

QUALIFICATIONS FOR RECEIVING WORKER’S COMPENSATION BENEFITS

Any Missouri employee who was hurt on the job is entitled to pursue work comp benefits. These are categorized as follows: medical treatment, payment for time missed from work (partial disability,) and a final lump sum settlement (permanent disability.) I’ve dedicated an entire chapter to these benefits further in this book, so please continue reading for detailed information.

It does not matter how long you have been working with the employer. It does not matter if the accident that caused your injury was your fault. It also does not matter if your injury occurred in Missouri, as long as your employment is generally based here. It may also be helpful to know that in addition to Missouri employees, the Missouri Worker’s Compensation system also applies to any out-of-state worker injured in Missouri.

As long as you were hurt on the job, while doing job-related activities, you are protected by the worker’s compensation laws.
The matter of ‘job related activities’ can be a debatable one. Often times, the employer’s insurance lawyer will try to shut down your case here. The argument that we see more and more is that the insurance company does not believe the worker was injured during the performance of his job related activities.\footnote{You can blame 2005 Worker’s Compensation reform for this!}

For example, if a worker is simply walking down a hallway on the employer’s property and he falls and breaks his leg, the insurance company’s attorney might argue that the action that resulted in his injury was completely unrelated to the scope of his job. They will flat out deny the claim and insist that he is not entitled to a settlement, or worse, even basic medical treatment.

If there is one thing I want you to take away from this book, it is this:

\textbf{DO NOT BLINDLY ACCEPT WHAT THE EMPLOYER, INSURANCE COMPANY, OR DEFENSE ATTORNEY TELLS YOU! CONSULT A WORKER’S COMPENSATION ATTORNEY, FOR A FREE, EXPERT OPINION, TO BE COMPLETELY SURE.}

Sometimes these representatives and adjusters innocently misunderstand Missouri Work Comp law and unfortunately, sometimes, they flat out lie about the rules, just to save a few bucks.
All cases should be reviewed by an attorney but keep in mind, there is one circumstance that will be a case killer. It is called the “coming and going” rule. If it can be applied, it will prohibit you from claiming a workman’s compensation settlement.

The “coming and going” rule means that if you are on your way to work or headed home at the time of the injury, you are not entitled to worker’s compensation benefits.

However, if you have been injured, coming or going, you may have some recourse for compensation from a different type of insurance policy. For example, if you are injured due to someone else’s negligence, call me at 314-444-4444 to discuss the specifics of your case. We will explore every possible avenue for financial compensation for your injury.
CHAPTER 6

I WAS HURT AT WORK... NOW WHAT?

As soon as you are physically able, report your injury to your supervisor and request written documentation of that report! The surest way to destroy your case is by failing to report your injury. This is absolutely critical for two reasons. First, it is the law! Missouri statute allows you only 30 days to report the injury to a supervisor. Second, waiting to report your injury destroys your credibility.

If you fail to report the injury within that time frame, according to the law, you forfeit your worker’s compensation benefits. The good news is that this happens to be a very flimsy law, and a good attorney will be able to help you circumvent this particular penalty for not reporting your injury.

But the second consequence is a lot harder to remedy. If you don’t report your injury to your supervisor as soon as practicable, you will be perceived as having exaggerated your injury. Rebuilding integrity is difficult to do. If you cannot make the time to follow Missouri Law and your company’s injury policy, you must not have been seriously injured. When it comes to bringing your
worker’s compensation in front of an ALJ, having strong credibility helps you to maximize your case!²

When you report your injury, you trigger the next step of Work Comp Law. This time however, it is your employer who must act. They are legally required to give you paperwork regarding your injury and file a “First Report of Injury” with the State of Missouri. You must be very specific when filling out this paperwork. Make sure to record the exact details of your accident and injury. They need to know how you were hurt and all the body parts injured. You also should get the name and phone number of everyone who witnessed your accident.

Your employer should notify their work comp insurance carrier of your injury and you will be sent to the doctor for treatment. You have the right to ask your employer for permission to treat with a doctor of your choosing. If they say “yes,” be smart, GET IT IN WRITING!

REMEMBER THE 30 DAY NOTICE RULE!

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² This is even more important than what the doctors will report about your injury. I’ll explain why later in the book.
CHAPTER 7

MY EMPLOYER REFUSES TO SEND ME TO A DOCTOR

I cannot stress this enough. If your employer denies you medical treatment for an injury you sustained while performing work related duties,

CALL AN ATTORNEY EXPERIENCED IN WORKER’S COMPENSATION CLAIMS IMMEDIATELY!3

Medical care is one of the three main benefits of the work comp system. All three are addressed in detail further along in Chapter 9. But in particular, this issue deserves its own special attention. It’s distressing to think of all people I’ve encountered who were hurt at work and whose employer (and/or the insurance company) refused to send them to the doctor. More times than not, the injured worker just pushed through the pain. In several of those cases, that lag in critical medical attention was devastating to their health.

When I am hired by someone who has not been given the opportunity to have medical treatment for their work related injury, my first

3 Do not call the “jack-of-all-trades” attorney – the ones who handle Divorce, DUI, Criminal, Wills...etc. You need a specialist. You wouldn’t let your primary care physician perform brain surgery, would you?! Hire an expert.
course of action is to work with the insurance adjuster to arrange it. Many times, I’m able to convince the insurance adjuster to authorize medical treatment with a few phone calls. But sometimes, they are adamant in their refusal. When this happens, there are several other tactics an expert work comp lawyer can employ.4

The point is, there are ways to deal with this problem. If you’re in this situation, you need to consult with a lawyer immediately.

4 I won’t be giving away any trade secrets about this here. We’ll just let the insurance adjusters learn about them the hard way.
Filing a claim is a fairly straight-forward process. It’s a matter of filling in the appropriate information on a two-page form. You then file that form with the main office of the Division of Worker’s Compensation in Jefferson City. It may seem simple, and it is, but don’t confuse its simplicity with triviality. If you don’t file the paperwork, you don’t have the power to enforce your rights.

When you are ready, your attorney will file this on your behalf. If you choose to pursue your claim on your own, you can download the form at:

http://labor.mo.gov/sites/default/files/pubs_forms/WC-21-AI.pdf

The Missouri Department of Labor has many resources for injured workers. In addition to consulting with an attorney, I would strongly encourage you to access the wealth of information available on their website: http://labor.mo.gov/

**KEEP IN MIND, YOU CAN FILE YOUR CLAIM FOR COMPENSATION ANY TIME WITHIN TWO YEARS OF THE DATE OF YOUR ACCIDENT. AFTER THAT PERIOD, YOU ARE FOREVER BARRED FROM FILING YOUR CLAIM!!**
Claim for Compensation Form - Page 1
Claim for Compensation Form - Page 2
In most cases, there are three types of benefits available to injured workers under Missouri’s system. These are medical treatment, payment for time missed from work (partial disability,) and a final lump sum settlement (permanent disability.)

**MEDICAL TREATMENT**

After you report a work related injury, your employer will send you to the doctor for treatment. The law requires them to provide you with medical treatment for a work injury. However, if you want your employer’s Worker’s Compensation insurance policy to pay for the treatment, then you are at the mercy of their Work Comp doctors. They have the ultimate say about who treats you.

I have had clients who received very good care from the work comp designated doctors. Unfortunately, in my experience, this has been the exception. It doesn’t take a genius to figure out that the insurance companies have a stable of doctors to
whom they routinely send injured workers. Trust me, these doctors know who is filling the feed bag.

If your appointed doctor recommends additional treatments, he or she validates your injury. More treatment is indicative of serious injury and consequently, higher bills that the insurance company is obligated to pay.

It’s a common belief that the insurance company puts an enormous amount of pressure on their doctors to quickly release injured workers back to work. This is by far, the most despicable aspect of Missouri’s work comp laws. What ends up happening is that treatment becomes dictated by some insurance adjustor instead of the doctor.

I’ve had many cases where injured workers have come to me because the doctor prescribed further testing, such as an MRI but an adjuster denied it. My clients were fortunate enough to be assigned a doctor who was willing to go to bat for them, but regardless of their advice, the work comp adjustor refused to authorize such a procedure. Why? The reason is simple. An MRI might reveal an injury that could require some type of costly remedy such as surgery.

Just as despicable are the work comp “doctors” who, in my opinion, should just flat-out lose their medical license because of the way they treat work comp patients. It’s always been my personal mission to fight for injured works and this particular scenario is a perfect example of why.
It’s not my intent to scare you. The reality is, if you are forced to deal with a bad doctor or even worse, an insurance adjuster who ignores a good doctor’s recommendations, you probably need an experienced Work Comp attorney to help you navigate the process.

Now, keep in mind, no one can force you to see a Work Comp doctor. You have the option to go to any doctor you choose. The catch is, the bills come to you. And further, most private health insurance plans will deny any claim for treatment for a work related injury. As stated in Missouri Work Comp law, the employer’s insurance company only has to pay for treatment administered by the doctor they chose for you. If you see your own doctor, you will very likely pay for it out of pocket.

But listen, you know your body better than anyone else, better than any doctor. If you feel you are not getting proper medical treatment, you need to contact an attorney immediately. An attorney can file a motion for an emergency hearing before the judge in which they can ask the judge to order additional medical treatment. Sometimes this is the proper route to go. I’m not a big fan because it can take a long time. (Don’t be fooled by the word ‘Emergency.’)

I tend to use other, more direct methods. At the end of the day, your health is the number one most important thing, and your attorney must be
vigilant in making sure you are receiving proper medical treatment.

TEMPORARY DISABILITY

The second benefit to which you are entitled is a disability payment for any work you miss due to your injuries. Temporary Disability benefits are payments you receive while still undergoing treatment. There are two kinds, Temporary Total Disability and Temporary Partial Disability.

Temporary Total Disability, TTD, is awarded if you are completely unable to work for a temporary period of time. Sounds simple, right? Naturally, insurance companies hate paying TTD. While the law seems fair, the enforcement of it is anything but. Here’s what really happens. Insurance companies will refuse to pay your TTD unless you have a note from your doctor saying you are medically unable to work. Remember, your doctor is really their doctor. How often do you think their doctors will say you are medically unable to work?

The standard procedure is to quickly release you back to work with “light duty” restrictions. These restrictions may be something like “no repetitive bending, sitting, twisting, turning, or standing.” I don’t know of many jobs that satisfy those restrictions, but still, they insist you are fine to work.
I had a work comp client several years ago whose treatment included knee surgery. Shortly after surgery, the doctor released her to light duty work, but refused to clear her to drive. This woman was unable to get to work because her knee was still so bad that she couldn’t operate a vehicle, but the insurance company refused to pay her TTD because “she could still work within restrictions.” I took up her case, argued on her behalf and ultimately, I got them to pay.

In the first chapter, I told you that worker’s rights were decimated on August 28, 2005. Here’s a specific example of how: As the law currently stands post ‘tort reform,’ you cannot begin receiving TTD payments until you’ve missed four or more days from work. You can only be paid for days 1 – 3 after you’ve missed fourteen. But, if you have any unused vacation, sick, or personal time, the Missouri legislature requires you to use all of this time before the insurance company has to pay. After you become eligible to receive TTD benefits, you are entitled to 2/3 of your average weekly wage.

The average weekly wage (AWW) can be calculated a number of different ways depending on various factors. For full-time workers paid an hourly rate, the AWW is calculated using the earnings for

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5 Take a guess at who some of the major lobbyists were behind the August 28, 2005 work comp reform laws. If you said ‘Insurance Companies,’ you get a free t-shirt! Email me at Josh@ShultzMyers.com. Subject: Tort-Reform T Shirt.
the 13 weeks prior to their injury. TTD payments are exempt from income tax. But, there is a cap on the weekly payments. The amount of the cap depends on your injury date. This information can be found at Missouri’s Division of Worker’s Compensation website.

The other type of temporary disability payment is called Temporary Partial Disability, TPD. As much as insurers hate to pay TTD, they seem to hate paying TPD even more. Practically speaking, you are entitled to TPD benefits when you can return to work in some capacity. Because of your injuries, you might take a temporary, lower paying position or work fewer hours.

TPD payments are calculated by subtracting your post-injury earnings from your pre-injury earnings. You are then entitled to 2/3 of that difference. Like TTD, this benefit payment is tax-exempt.
The final benefit I will discuss is called Permanent Disability. This is an untaxed lump sum payment for any permanent damage you suffer as a result of your work related injury. You must have achieved Maximum Medical Improvement (MMI) as determined by your doctor. When you have
recovered as much as possible, you are then entitled to compensation for any remaining disability.

In Missouri, permanent disability ranges on a scale from 1% to 100% disabled. Virtually everyone is entitled to some amount of disability benefit payment. If you are unrepresented, most insurance adjusters will try to make you feel like you are not entitled to a lump sum disability payment because your injuries haven’t ‘disabled’ you. They play on your ego. Most people resist the idea of being disabled, and an insurance adjuster will count on your layman’s understanding of what the word ‘disabled’ means.

Technically, there are two kinds of permanent disability: permanent partial disability (PPD) and permanent total disability (PTD).

Permanent partial disability (PPD) means that a worker has been injured and sustained some level of permanent injury, but not enough to prevent them from working. This is the most common form of permanent disability and it is expressed in terms of a percentage of disability. In practice, the threshold for qualification as a “permanent disability” is very low. In fact, it’s my opinion that if there has been any medical treatment, the worker is entitled to some percentage of PPD.

To determine the PPD payment amount, lawyers use a 3-part mathematical equation:
You already know how the AWW (Average Weekly Wage) is calculated. So, let’s move to the second part of the equation: Body Part Factor. Every body part is assigned a number. For instance, a shoulder is 232. If you injure your shoulder, you put 232 into the equation. That 232 corresponds to a ‘week level.’ A head injury or injury to the back, torso, or abdomen is considered ‘whole body’ which gets a number of 400. Below is the schedule, or ‘meat sheet’ which shows every body and their corresponding ‘week level.’
The third part of the equation is the disability percentage. If there is going to be a fight, this is what it’s going to be about. As you would expect, the higher the disability percentage, the higher the total payout. Most cases settle because attorneys and judges know that certain types of injuries fall in certain disability ranges. However, sometimes the parties cannot agree, and it becomes necessary to have the employee evaluated by a physician for a disability rating.

The purpose of this examination is to obtain an additional opinion about your disability rating. This doctor uses a series of tests in order to form the basis for that opinion. Additionally, your attorney might then depose that doctor to further explain his or her findings to an ALJ.

These doctors generally charge from $500 - $1200 for this exam and report. Your attorney should speak with you first about whether this strategy will be beneficial. Keep in mind, the doctor’s opinion is just that, an opinion. In order to justify the cost, the exam must add value to the case. A good attorney knows which doctors the judges find credible. The only way to ensure you get a fair settlement is to have an experienced attorney who knows what your case should be worth.

The second type of Permanent Disability benefit is based on Permanent Total Disability (PTD.) It means that because of the injury, the
worker is unable to compete in the workplace. PTD can be misleading.

It DOES NOT mean that you can no longer work at your previous employer. It DOES NOT mean that you cannot work at any job.

What it does mean, is that you cannot reasonably compete in the workforce against other able-bodied workers. This is a pretty high standard and requires a very severe injury often resulting in some form of surgery. Thorough attorneys will hire a vocational rehabilitation expert to testify on your behalf. Vocational Rehabilitationists are experts whose job entails putting injured workers back into the workforce.

If a worker is determined to be permanently and totally disabled, they are entitled to weekly payments for the remainder of their life. Alternately, it is common for the insurance company to offer a large lump sum payment in exchange for lifetime payments.
Most people are unaware that they may be entitled to additional disability payments from The Second Injury Fund (SIF.) This is a fund administered by the state of Missouri to further compensate workers for the combination of their work injury with other serious preexisting injuries or conditions.

To better explain, let me offer this example. I recently represented a commercial truck driver. While on duty, she tore her rotator cuff in both shoulders. Now, rotator cuff tears are not fun and often require surgery. In her case, they did. However, more often than not, workers fully recover and have little to no problem returning to work after the surgery and some physical therapy.

In my client’s case, these two injuries were in addition to multiple pre-existing conditions and ended up being the straw that broke the camel’s back. She’d had prior back surgery, ankle surgery, and two knee surgeries. Keep in mind, the prior

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*SIF has been temporarily suspended due to governmental underfunding. It’s possible it will be reinstated in the future. Any pending SIF claims will resume at that time.*
injuries that necessitated these surgeries were completely unrelated to her truck driving job.

In Missouri, the employer is only responsible for the disability caused by the work injuries. Ultimately, we settled with the employer for the disability in the shoulders. But this was only half the story because, considering all of her prior injuries, she was now permanently and totally disabled.

This is where The Second Injury Fund comes in. Because she had a severe work injury coupled with prior severe injuries, The Second Injury Fund made a large settlement payment after our medical expert convinced them she was medically unable to return to work.

The technical requirements to qualify for The Second Injury Fund are that the work injury result in at least 15% permanent partial disability (PPD) of one body part or 12.5% PPD of the whole body. Additionally, the preexisting injury or condition must also constitute a 15% PPD at any body part or 12.5% PPD of the whole body. The important thing to note is that the preexisting injury does not have to be work related. In fact, it doesn’t have to necessarily been an injury – it can even be some congenital

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7 This was a feat in itself. Before she hired me, the employer denied all responsibility and refused to provide any medical treatment or disability settlement.

8 Remember, “Permanent and total disability” in the work comp context means that the employee is unable to reasonably compete against other able-bodied workers.
condition. The point is, it must be some condition that physically (or even psychologically) interferes with your ability to work. Thus, make sure you tell your attorney about any prior injuries or conditions that still cause some problems.
If your treatment has ended, congratulations! It is now time to start working on getting your lump-sum settlement (PPD or PTD). This settlement will be negotiated between your employer’s work comp attorney and your attorney, (or you if you have not hired representation.) The first step is to request and analyze all of your medical records. We need to understand exactly how the doctors have interpreted your injury. The forms you might get from the doctor’s at each visit are not the same records that your attorney gets. Your attorney should get a much more complex, detailed set of records.

After the records have been reviewed, the next step is to send a demand letter to the employer's work comp attorney. This demand should request a specific dollar figure. For instance, a demand for settlement of a shoulder injury might state that the employee is seeking a settlement based on:

\[
\text{AWW of } \$365.08 \times 160 \text{ week level} \times 15\% \text{ PPD} = \\
\$8,761.92
\]

By this time your attorney will have also submitted a request for a pre-hearing with the
Division of Worker’s Compensation. A pre-hearing is the first of three types of docket settings. You may also be involved in a mediation, and/or settlement hearing.

Scheduling a pre-hearing sends a signal to the Division of Labor (DOL) that you have completed treatment and are ready to begin working towards a final resolution. The DOL will assign a date for the attorneys to meet in a courtroom setting for a pre-hearing conference with the assigned Administrative Law Judge (ALJ). Pre-hearings are useful because they help to fuel the progress of your case. During these meetings, the attorneys might discuss various issues and it’s a good opportunity to get face-to-face and discuss settlement possibilities.

You would not believe how many letters and voicemails about settlement I have sent prior to the scheduled pre-hearing that have been completely disregarded. However, when we arrive at the pre-hearing, things start to move again. After the attorneys discuss the case, they then report their progress to the ALJ. They can ask the ALJ to set the case for another pre-hearing or set it for mediation.

During mediation, the attorneys meet with the ALJ and further discuss the case. Each attorney lays out their arguments and points to the strengths and the weaknesses of the case. All ALJ’s have different styles and some take a more aggressive role than others. But normally, they listen to each side, review the records, and give an indication of how
much they would award. This is a good indication to the lawyers of the appropriate settlement amount and it often helps resolve the case.

Unfortunately, not all cases are resolved at mediation. In this situation, the docket is set for a final settlement hearing. It is the work comp equivalent of a “trial.” However, it is a far cry from the TV courtroom dramas.

During the final hearing, the parties appear before the ALJ in their office. The attorney will ask their witnesses questions but the majority of the evidence is submitted through deposition transcripts and records. After the hearing, the ALJ has an additional 30 days in which they will send out their written decision.
Over the years, I’ve heard a number of reasons why people are hesitant to enforce their right to file and pursue a Worker’s Compensation Claim. The most common reasons are these:

- My boss says if he reports my injury, the company’s worker’s compensation insurance premiums will go up.
- My co-workers will look down on me for being a faker, cry-baby or for trying to “scam the system.”
- I don’t want the hassle, I’ll just go to my GP and deal with my injury on my own.
- The idea of a Work Comp claim sounds too stressful and I don’t like conflict. I don’t need this aggravation, I’m already hurt!

These are the most common reasons, but truly, the excuses are as varied as the people who make them. Everyone is different and ‘to each their own,’ as they say. If you don’t want to enforce your rights, no big deal, just don’t. However, I have a feeling that the fact that you’re reading this this book is a good indicator that you are leaning towards exercising your rights and pursuing the benefits to
which you are legally entitled. If you are a fence sitter, let me address the most common concerns.

**My boss says if he reports my injury, the company’s worker’s compensation insurance premiums will go up.**

This is doubtful. I can’t say how every insurance company in the country operates, but I can tell you that they set their rates based on statistics. You are just one claim. Of course your injuries are significant to you. But to the statistics, you're a blip!

If your employer tells this story to each of 50 injured workers, and he prevents all 50 from filing work comp claims, he has set the standard at 0/50. Now if you choose to enforce your rights, you’re 1/50 and your employer has still prevented 49 claims. Your one case is just not statistically significant. And frankly, if every injured worker (50/50) invoked their work comp rights, yes, it sure would affect your employer’s premiums and consequently might result in a far safer work place.

Regardless, your claim is very unlikely going to impact the numbers largely enough to affect their premiums.

**My co-workers will look down on me for being a faker, cry-baby or for trying to “scam the system.”**

I don’t love the idea of people thinking rotten things about me. I’ve read documents in which
certain insurance adjusters have called me, ‘difficult.’ It’s unpleasant, but if I am truly doing my job and advocating for my clients to the best of my abilities, then I SHOULD make things difficult for an insurance adjuster! If people perceive you in a negative light because you have chosen to advocate for yourself, then congratulations. You’re doing the best you can for yourself. Your health and financial well-being are far more important than what people think of you.

I don’t want the hassle, I’ll just go to my GP and deal with my injury on my own.

Remember, your medical treatment is only one of the three benefits that may be available to you. The bigger issue is: who is going to pay for your treatment? You might be in for a very expensive surprise if you think your private health insurance will pay. They almost always exclude payment for work injuries (because they expect the employer to provide treatment). However, you often won’t realize this until after you have seen the doctor and run up a bill. Then the doctor will be looking for you payment.

The idea of a Work Comp claim sounds too stressful and I don’t like conflict. I don’t need this aggravation, I’m already hurt!

A great worker’s compensation lawyer should be your stress buffer. We head up all conversations and diffuse any conflict that may arise. If your attorney is asking you to do more than show up for your doctor appointments and provide
regular updates about your treatment, you don’t have a good one. It is my job to fight your battles and deal with any conflict that arises. In fact, the whole purpose of hiring the attorney is to make your life easier. Knowing that your rights are being protected and that you have someone you trust fighting the battles for you should be the ultimate comfort.

If you’ve been injured and are still unsure if you want to pursue a claim, make an appointment to see a work comp lawyer. Sometimes, the only difference between a good and bad experience is your lawyer. A good lawyer should be someone who is willing to explain the process to you and someone you know you can trust. If they are reluctant to meet with you, or if they don’t instill confidence in you, then you shouldn’t proceed with the claim – at least not with them.

Request as many free consultations as it takes. And if an attorney wants to charge you for the initial meeting, walk away.
Hiring a lawyer is an unfamiliar process. I think to some degree we all have a fear of the unknown. But you are not simply dealing with the unknown. In a worker’s compensation case, you have medical, financial and legal issues to address and overcome. It can be stressful for many people because it is!

I know a lot of people who assume they can’t afford legal representation, so they never even call. We’ve all heard stories of outrageous hourly legal fees. We have all heard about expensive criminal and divorce lawyers. Their rates can be so high, they’re comical! In fact, most divorced people I know say the lawyer was the only one who came out on top.

But injury cases are different. Most injury attorneys (both personal injury and worker’s compensation) represent clients on a contingent fee. It means that the lawyer gets paid a percentage of what he can recover for the client. In Missouri Worker’s Compensation cases, the standard fee is 25% of the award or settlement. It’s an incredible advantage to the client. You get expert assistance navigating a notoriously tricky system without a penny up front or out of pocket. Conversely, if you don’t recover a dime, (which by the ways has NEVER
happened with one of my clients,) you owe me NOTHING. 25% of $0 recovery = $0 Attorney Fee. You have nothing to lose.
I explained how much my legal services cost, when I get paid, and how. But the real question you should be asking is: does the increase in your settlement amount justify the cost of hiring me to pursue it for you? It’s a very good question! I would say, most of the time, yes. But, I’m not exactly unbiased. How can you be sure that my answer is not self-serving? Being a skeptic myself, I can appreciate your reserve.

When you contact me for a consultation, I look at the basic facts of your case. The first thing I do is to look for any circumstances that would prevent me from pursuing your work comp claim; one of those being whether or not you can pursue your case on your own. If you can, I will tell upfront. Not only that, but I will offer you the best advice I can about how to do so.

Frankly, I cannot afford to take any case to which I cannot add value. It is a drain on my resources and more importantly a drain on your settlement. It’s a lose/lose situation for both of us, and I just won’t do it.

On the other hand, if I say “Yes, it is definitely worth it,” it is. There have been numerous studies
into this exact issue, so let me back up my claims. On December 11, 2006, Scott Lauck published an article in Missouri Lawyer’s Weekly entitled “Pro Se Claimants Feel Brunt of Worker’s Compensation Reforms.” (Pro Se claimants have not hired an attorney.)

The article cited the results of a study comparing the settlements of unrepresented workers to those of represented workers. Before the 2005 reforms, represented workers received an average settlement 38% larger than an unrepresented person. However, since those reforms, represented workers received an average of 49% more than unrepresented workers.

Why is there such a big difference? There are several reasons, but that article indicated that one of the most important factors is this: the decrease in ‘pro se’ claimants recovery is that because of tort reform, work comp judges are no longer permitted to assist unrepresented workers.

Thus, even if it is painfully obvious to the judge that you are getting the worst deal in the history of mankind, they cannot intervene in anyway on your behalf. You are out of luck.

My fee may be 25%, but it will invariably cost you much more if you need one and don’t hire a lawyer. Give me a call and let me look at the details of your case for a free assessment.
CONCLUSION

I hope this book serves as a helpful reference tool for understanding the Missouri Worker’s Compensation system. Being familiar with the lingo and procedures gives you power and leverage. You are better equipped to advocate for yourself. You are prepared for the pitfalls and armed with the knowledge you will need to sidestep them. You can attend your pre-hearing, mediation and final hearing with a solid understanding of the process.

I hope I have made it clear that the issues involved in worker’s compensation claims are highly technical and often complicated. If you decide to make a go of it on your own, this book will be a great resource. But it is no comparison to a conversation with a work comp expert. Call for a consultation at the very least.

Hiring a great work comp attorney, will alleviate your stress and result in more money in your pocket. Make sure you select an attorney who specializes ONLY in injury law. Let a divorce attorney handle divorces and a traffic lawyer handle your speeding ticket. Injury law is far too complex to risk hiring anyone less than an expert.

If would like to speak with me about representing you for your work injury, call me now
at 314-444-4444. Our phone is answered 24 hours a day, 7 days a week. You can always email me at Josh@SchultzMyers.com, or visit our website at www.SchultzMyers.com.
The Ultimate Missouri Work Comp Book
What Every Injured Worker Should Know

“I wrote the book because I was tired of seeing the same old tactics used by the work comp insurance companies. If you think they will treat you fairly, you are sadly mistaken. They will try to keep you in the dark about your rights. I might not be able to represent every injured worker out there, but through this book, I can educate workers about how the system really works.”

Josh Myers exclusively focuses his practice on Plaintiff’s Personal Injury law. By devoting 100% of his time to fighting the insurance companies on behalf of the injured, he has developed an intimate knowledge of their defense tactics. He knows how they fight claims and how to beat them. Although the goal is always to achieve a fair settlement, Mr. Myers routinely handles jury trials when needed. He has been honored with numerous honors which include being inducted into the Multi-Million Dollar Advocates Forum, honored as a Top 100 Missouri Trial Lawyer by the American Trial Lawyers’ Association, being named among the Top 10 Personal Injury Lawyers in St. Louis, named as a “Super Lawyer” by Super Lawyers magazine, and named as one of the Top 40 Layers Under 40 by The National Trial Lawyers. Additionally, he was recently honored by Missouri Lawyers’ Weekly as Missouri’s Winningest Attorney.

Based in St. Louis, Missouri he has been accepted to practice law in all Missouri, Illinois, and Arkansas Courts. He is a member of professional organizations such as the Missouri Association of Trial Attorneys, Illinois State Bar Association, Bar Association of Metropolitan St. Louis, and the American Association for Justice.

To learn more about Josh Myers and the cases he handles, visit www.SchultzMyers.com or call 314-444-4444.