# Study unit 10: WORKERS COMPENSATION

# Introduction

Workers’ compensation generally covers illnesses or diseases that employees develop as a result of on-the-job exposure. Work-related illnesses can range from traditional occupational illnesses like black lung disease (from exposure to coal dust) and asbestosis (caused by exposure to asbestos).

It may be relatively easy to prove that work conditions caused traditional occupational diseases, where the medical link is well established and exposure away from work is rare. Proving the work connection can be more difficult when the illness is considered an “ordinary disease of life”—a condition that many people develop throughout their lives from various causes. That doesn’t mean it’s always impossible to get workers’ comp benefits for heart disease, high blood pressure, lung cancer, or other common illnesses (unless state law explicitly rules it out). But employees will need strong medical evidence that workplace exposure caused or contributed to the illness.

# Learning Outcomes of Study Unit 10

By the end of this lesson, you should be able to:

10.1 Define the concept of Workers Compensation

10.2 Identify the injuries covered by law

10.3 Discuss the Accidental Personal injury and Occupational Diseases

10.5 Identify injuries which may or may not be covered by the law

10.6 Explain the benefits of Worker’ Compensations

10.7 Summary of Workers’ Compensation Act

# 10.1 Define the concept of Workers Compensation

Workers’ compensation is a form of insurance that provides cash benefits and /or medical care for workers who are injured or become ill as a direct result of the job in exchange for mandatory relinquishment of the employees’ rights to sue their employer for negligence.

Employers pay for this insurance, and shall not require the employee to contribute to the cost of compensation as directed by the Workers Compensation Board which determines whether that insurer will reimburse for cash benefits and/ or medical care, and the amount payable.

The old system requiring lawsuits against employers just was not effective. Negligence by the employer was often difficult if not impossible to prove and the legal process was very time consuming and expensive, with no benefits paid to injured workers during the process. This is why the state passed Workers Compensation laws, providing a statutory solution to the problem. Workers Compensation was a new kind of insurance which all employers were required to obtain to protect their employees.

In a workers’ compensation case, no one party is determined to be at fault. The amount that a claimant receives is not decreased by his or her carelessness, nor increased by an employer’s fault. However, a worker loses his or her right to workers compensation if the injury results solely from his or her intoxication from drugs or alcohol, or from the intent to injure him\herself or someone else.

A claim is paid if the employer or insurance carrier agrees that the injury or illness is work-related. If the employer or insurance carrier disputes the claim, no cash benefits are paid until the workers ‘compensation law judge decides who is right. If a worker is not receiving benefits because the employer or insurance carrier is arguing that the injury is not job-related, he or she may be eligible for disability benefits in the meantime. Any payments made under the Disability Program, however, will be subtracted from future workers’ compensation awards.

if you can return to work but your injury prevents you from earning the same wages you once did, you may be entitled to a benefit that will make up two-thirds of the difference. You may also return to work in light or alternate duty before you are fully healed

***However, not all Injuries are covered by the law***

Not all injuries are covered by the Workers’ Compensation Law even if the injury happened “on the job’’ In order for an injury to be covered, the harm suffered by the employee must have been caused by an ‘’ accidental personal injury arising out of and in the course of employment. Just because person is hurt “while working’’ “at work’’ may not enough for the insurance to apply. Additionally, if you can prove that you have an occupational disease you may be entitled to Workers ‘compensation benefits.

If one is seeking workers’ compensation benefits, it is important for one to one to prove that injury or illness is work-related. Usually, if you were doing something for the benefit of your employer, and you were injured or became ill as a result, then your injury or illness is work-related and you can receive benefits as long as you meet the other eligibility requirements.

Although the “work-related” requirements may seem like a simple rule, it can get tricky. Some common situations are covered below. If your injury or illness falls into a gray area, you may want to consult with an attorney to find out whether you will be eligible for benefits.

## **10.2 Injuries Covered by the law**

The workers compensation law defines an injury as any mental or physical harm due to workplace accidents or diseases, including accidental damage to artificial limbs, dental appliance and teeth among others and injuries covered include:

**Physical harm or injury** such as bruises, burn, cuts, fractures, crushing injuries, hernias, sprains, stiffness, amputation, loss or paralysis of part of the body, sudden loss of hearing, sudden loss of vision and disfigurement.

**Mental harm** including nervous disorder, hysteria, and traumatic neurosis. The effect of brain hemorrhage caused by an industrial accident may also result in such harm. If the injury is mental harm or emotional stress without a physical trauma, the injured employee must show that if resulted from a situation of greater dimensions than the day-to-day mental stresses and tensions which all employees experience.

**Accidental injury** such as physical or traumatic mental harm occurring suddenly and unexpectedly as a result of some employment-related activity.

**Occupational harm or diseases** is chronic physical or mental harm caused by exposure over a period of time to some employment-related substance, condition or activity. Occupational diseases include loss of hearing and deterioration of bodily functions. Examples of common types of occupational diseases are dermatitis (skin trouble), infection, silicosis, tuberculosis, pneumonia, lead poisoning, and respiratory disease. In addition, occupational diseases include deterioration of bodily function caused by working conditions over a period of time. For instance, hernias and back trouble caused by repetitive motion or repeated strain over a period of time are considered occupational diseases under the law.

**Employees only**

In determination whether an injury falls under the coverage of workers’ compensation the first thing to understand is that this law protects only employees. The worker’s compensation statute provides legal guidance on who is a covered employee and employer. A genuine employer-employee relationship must exist. Some businesses are set up in such a way that some persons don’t actually work for the business but work with it as independent contractors. Other businesses don’t have any employees because they are a sole proprietorship or partnership. Person in these categories, if they want workers’ compensation insurance, may elect to be covered and can obtain the necessary insurance. There is a statutory procedure for electing coverage.

## **10.3 Accidental Personal injury and Occupational Diseases**

If there is an employer-employee relationship between the worker and their company, the next factor considered is if the injury was an accident. An accident injury is one that happens “by chance or without design, taking place unexpectedly or unintentionally”

Exceptions to the accident’s requirements are occupational diseases. These are illnesses caused by the nature of the circumstances surrounding the worker’s job. For example, asbestosis is a disease that may have been caused by a worker’s job of removing asbestos from buildings, some forms of skin, eye or lung disease may have been caused by long term exposure to chemicals solvents or other solutions used on the job. Conditions such as these may result in the employee’s being covered by workers’ compensation even though there was no specific “accident”, they are covered as occupational diseases.

**Arising Out of Employment**

For a compensable accidental injury claim, the injury must “arise out of employment”. If the condition under which the work is required to be performed by the employer causes the workers injury, it is said to “arise out of employment”. The focus of this factor is exposure of the employee to risk or danger because of the job requirements. For example, if a person must work in an environment that is usually wet and slippery for instance, a car wash facility or a water amusement ride at an entertainment park then a slip- and-fall injury experienced by that worker could be said to arise out of the person’s employment.

**Arising in Course of Employment**

For a compensable accidental injury claim, the injury must also “be in the course of employment”. “In the course of employment” is a slightly different factor. Here the attention centers on the time, place and circumstance of the injury. If the injury occurs during the period of time when an employee was at work, the employer’s place of business or such other location as may be designated by the employer, and while the employee was performing their job duties or something related to them when the injury took place, the injury is said to have arisen in the course of that person’s employment.

If all of the above factors are satisfied, and that’s not always easy to determine initially-a worker’s injury will generally be covered by workers’ compensation insurance. Frequently, an investigation of the claim is necessary. If a worker believes they have sustained a compensable injury, an employee claim may be filed with the Workers’ Compensation Commission to receive a determination regarding the type and amount of any benefits to which the worker may be entitled. Initial determinations that may have been made by insurance carrier are not binding on the Commission.

The legislature of each State determines the type and amount of benefits which are payable under workers’ compensation insurance, just as the various States differ in determining what kind of injuries are compensable and which are not. Based upon the laws enacted in each State the insurance companies who provide this type of insurance coverage consider the probabilities of injury for different occupational categories and set their premium rates accordingly. This is the amount charged of employers of their workers’ compensation insurance. The Workers’ Compensation Commission does not establish rates of premiums, nor does the commission itself provide insurance coverage. Workers’ compensation payments are not taxable to the employee as income.

## **10.5 Injuries Which May or May Not Be Covered by The Law**

**Lunch Breaks:** Usually injuries or illnesses that happen on an employee’s lunch break are not covered under workers’ compensation. For example, if you sprained your ankle while walking into a restaurant to pick up your lunch (or lunch for your coworkers), then you probably cannot claim workers’ compensation for that injury. However, if you were also picking up lunch for your boss, then the injury might be covered.

If you sprained your ankle in a cafeteria on the company’s premises, then your injury might be covered by workers’ compensation. Using a company cafeteria saves you time, which leaves more time for work, which makes your use of the cafeteria beneficial to your employer.

**Company Events:**

Many companies sponsor special events like parties, picnics, or baseball games- and injuries sustained at these events- are usually covered by workers’ compensation. For example, let’s say don’t drink too much wine at the company anniversary party and decides to twirl his coworker Angie above his head while they are dancing. Unfortunately, he drops Angie, and they probably covered by workers’ compensation.

**Travel**

If you are injured on your commute to or from work, your injury probably isn’t covered by workers’ compensation. However, there are many times when injures during travel are covered. For example, if you are travelling for work, but not to your fixed work site (on a business trip, for example), then your injuries will probably be covered. If you are a travelling salesperson with no regular work site, then injuries you sustain while driving to meet with a customer will probably be covered. Or, if you are injured during your regular commute but are driving a company vehicle, then your injuries will probably be covered.

**Misconduct**

If you were injured while breaking a work place safety rule or while doing something else that your employer has prohibited (even a criminal act), your injury might still be covered by workers’ compensation, depending on the level of your misconduct. This is part of the workers’ compensation bargain. Employees do not have a right to sue their employer for work-related injuries, but those injuries are usually covered by worker’ compensation, regardless of fault.

As an example of how injuries that stem from misconduct are usually still covered under workers’ compensation, let’s say Dolores and Kalil work on the assembly line at Widget World, One day, they decide to play catch with a two-pound metal ball that is part of the machinery.

This is direct violation of a safety rule, which prohibits playing with equipment. While Dolores is attempting to catch the ball, it slips through her hands and hits her in the head, knocking her unconscious and causing a minor brain injury. Her injury could still be covered by workers’ compensation, even though she was violating a work rule when she got hurt, especially if the employer knew this type of horseplay occurred and condoned it.

There are some exceptions to this general rule. For example, if your injuries were self-inflicted, then they might not be covered.

**Preexisting Conditions**

If you have a preexisting condition, and your job aggravates and exacerbates it in a way that results in an injury or illness, then the injury is probably covered by workers’ compensation. For example. When Macro was 30, a disc in his back ruptured. The injury resolved itself within six months and has not bothered him since. He is now 45 and works in a department store. One day, he ruptures the same disc while lifting a heavy object off a shelf. Although his job did not cause his initial injury, it certainly caused it to reoccur. The injury is likely covered by workers’ compensation.

**Hearing loss**

People who work in a noise environment such as construction sites or manufacturing plants, often suffer hearing loss over time. Unless there is some other obvious reason for the impairment, this injury is usually covered by workers compensation.

**Mental Condition**

Mental conditions that are job-related are covered by workers’ compensation. For example, if you are traumatized by witnessing another employee injured or killed on the job, your trauma is compensated by workers’ compensation. Conditions caused by a stressful workplace environment can also be compensated. In addition, if you become depressed because you have suffered from a work place injury, that depression is covered by workers’ compensation although it is hard to prove that the mental condition actually exists and that it was caused by workplace events.

**Diseases and Illness**

If you have a disease or illness resulting from your work, then you are entitled to workers’ compensation. For example, workers suffering from asbestosis, which is a disease caused by exposure to Asbestos, can receive workers’ compensation benefits, as can workers suffering from black lung disease, which is caused by inhaling coal dust. Except in the case of recognized environmental illnesses like these, however, it can difficult to prove that a disease is work-related and not something that would have happened anyway.

## **10.6 Benefits of Worker’ Compensations**

The workers’ compensation Act provides for the following benefits in appropriate cases

**Temporary Total Disability Benefits:** This is the period of time frequently referred to as the “healing period”. If an employee’s injury has resulted in a disability that prevents the person from returning to work at all or the person is completely disabled for all work purposes, then the employee may receive temporary total disability payments. If the period of disability is fourteen (14) days or less then the compensation benefit payments may not be allowed for the first three (3) days of disablement e or except for payment for hospital, nursing or other medical services, funeral expenses or medicine. If the period of temporary disability lasts for more than fourteen (14) days, then the compensation is allowed from the date of disability.

**Temporary Partial Disability Benefits:** These are benefits to which an injured employee may be entitled during the process of recovery when the worker during a temporary period is **NOT** totally disabled. They are intended to be temporary and generally apply when the worker can only perform limited or part-time duties at a reduced income level. That is, when their wage-earning capacity is lower. The employer or its insurer pays the covered employee compensation that equals 50% of the difference between the average weekly wage of the covered employee and the wage-earning capacity of the covered employee in the same or other employment while temporarily partially disabled, subject to a maximum payment of 50% of the state average weekly wage.

Generally, if a covered employee is temporarily totally disabled due to an accidental injury or an occupational disease, the employer or its insurer shall pay to the covered employee compensation the equals two-thirds of the average weekly wage on the covered employee, up to a maximum of the average weekly wage.

Temporary total disability benefits are intended to replace the income being lost, at least in part, during an interval when the injured employee cannot work at all. The benefit is terminated when, during the process of treatment and recovery, the point is reached where the worker is no longer totally disabled and that is, they can return to work in some capacity or if a medical determination is made that the injured worker has reached maximum medical improvement, even if the person has not fully recovered to their pre-injury condition.

**Permanent Total Disability Benefits:** Some injuries are so serious that a worker is permanently Totally disabled. Absent conclusive proof to the contrary, in the loss of use of any of the following constitutes a permanent total disability: both arms, both eyes, both feet, both hands, both legs, or a combination of any two of the following: an arm, eye, foot, hand or leg.

**Permanent Partial Disability Benefits**: Injuries that are not so serious as to leave a worker permanently, totally disabled may nonetheless result in some permanent impairment. This is called permanent partial disability.

Generally, a covered employee who is entitled to compensation under the workers’ compensation Act shall a minimum weekly compensation of about $50.00 for permanent partial disability unless the employee’s average weekly wage was less than $50.00. If the worker’s average weekly wage was less than $50.00, they will receive compensation that equals their average weekly wage at the time of the accidental injury or the last injurious exposure to the hazards of their occupational disease.

Benefits payments for permanent partial disability continue for a period of weeks established by the statute, a period that varies according to the body part injured and severity of the injury. For example, the total loss of a thumb or the use of the thumb results in payments of 100 weeks. The total loss or loss of use of the 4th finger (also called the little finger) results in payments for 25 weeks. When the period allowed by a Workers’ Compensation Commission finding and prescribed by the law has run out, the compensation payments cease.

If a covered employee has an accidental injury or an occupational disease that results in a permanent total disability, the employer or its insurer shall pay to the covered employee compensation that the equals to the two-thirds of the average weekly wage of the covered employee, subject to a maximum payment equal to average weekly wage. No payment for permanent disability shall be less than half pay of an employee.

**Medical/ Hospitalization Benefits**: In addition to the various of disability benefits to which an injured worker may be entitled, if a covered employee has suffered an accidental injury, compensable hernia or occupational disease, the employer or its insurer promptly shall provide to the covered employee, as the commission may require:

* Medical, surgical or other attendance or treatment
* Hospital and nursing services
* Medicine
* Crutches and other apparatus
* Artificial arms, feet, hands, legs and other prosthetic appliances

The entitlement to these services may continue indefinitely or for whatever period is required by the nature of the accidental injury, compensable hernia or occupational disease if there is evidence to establish that the need for these services is reasonable, necessary and causally related the accidental injury or occupational disease.

**Wage Reimbursement Benefits:**

In addition to other compensation paid to a covered employee who is entitled to compensation under the Workers’ Compensation Act, the employer or its insurer is required to reimburse the covered employee for lost wages due to time spent being examined by a physician or other examiner by the request of the employer or its insurer and the time spent attending and travelling to and from a Commission hearing scheduled as a result of a continuance caused by action of the employer or its insurer, if the claimant is otherwise entitled to compensation benefits.

**Vocational Rehabilitation Benefits:** When a covered employee is disabled from performing work for which they were previously qualified as a result of an accidental injury or an occupational disease, the covered employee is entitled to vocational rehabilitation services. Training may last up to 24 (twenty-four) months and other services may include: Counselling and guidance

**Death and Funeral Benefits**

The Workers’ Compensation Commission does not itself make payments to injured workers. The commission’s role is to process and adjudicate claims. Once appropriate determination has been made in specific cases, it is the responsibility of the insurance carriers and self-insured employers to make timely benefits payments to injured workers as required by the commission’s awards and orders.

## **10.7 WORKERS COMPENSATION ACT, CAP. 225**

This Act provides for compensation to workers for injuries suffered and scheduled diseases incurred in the course of employment.

Section 3 provides that an employer is liable to compensate an employee who in the course of business is injured by accident.

Under Section 4, where a deceased worker leaves any family members who are dependents, the amount of compensation shall be a sum equal to sixty times his or her monthly earnings. Where the worker is permanently totally incapacitated, the compensation shall be a sum equal to sixty months’ earnings (Section 5). Sections 6 and 7 provide for where a worker is permanently partially incapacitated as well as temporarily incapacitated, respectively.

Section 11(1) states that where a worker has given notice of an accident to the employer, the employer within a reasonable time must arrange for a medical examination by a qualified medical practitioner.

The employer and the worker may enter into an agreement for compensation with the written approval of the labor office (Section 12).

The injury or disability shall be assessed in accordance with Section 13 of the Act