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## **I. INTRODUCTION**

Massachusetts has had a Workers' Compensation Act (referred to as the "Act") since the early part of this century. The Act was significantly amended in 1985, 1986, 1988, and December, 1991. This booklet provides a summary of the provisions of the Act.

## **II. COVERAGE**

### **1. Is my Employer required to provide me Workers' Comp Insurance?**

Almost all Employers in the Commonwealth are required to carry a policy of Workers' Compensation Insurance or else be self-insured. (Section 25A). Employees who work for the Commonwealth or its various agencies are also covered by the Act except that the Commonwealth acts as the Insurer. (Section 25B). There are a few Employees excluded from the Act such as most cab drivers, outside commissioned sales people, part-time domestic servants and professional athletes when covered by a contract. (Section 1(4)).

### **2. How can I find out who my Employer's Workers' Comp Insurer is?**

The Employer is required by law to give written or printed notice to its Employees of the name of its Insurer.

(Section 22). This is usually done by posting a notice on a bulletin board. If the name is unavailable, an Employee can write to the Department of Industrial Accidents (DIA), 600 Washington St., Boston, MA 02111.

**3. What if the Employer does not carry Workers' Compensation Insurance?**

The Employer is then subject to a fine up to \$1,500.00 or up to one year's imprisonment. (Section 25C). The Employer may also be debarred from bidding on public contracts. Or, the DIA Commissioner can seek an order stopping work but still requiring the Employer to pay the Workers their wages for at least 10 days.

Nevertheless, an Employee of an uninsured Employer can still obtain benefits. He/she can sue the owner directly and/or file a claim for benefits with the Workers' Compensation Trust. (Sections 65, 66, 67). The Trust is funded by Insurer/Employer premiums and is administered by the Commonwealth.

### **III. INJURIES**

**4. What kinds of injuries generally are covered by the Act?**

An injury is compensable when arising out of and in the course of employment. (Section 26). If the injury occurs at

work, regardless of who's to blame, it is generally covered by the Act, unless the Employee was injured because of his/her own serious and willfull misconduct. (Section 27).

**5. What about cumulative trauma and repetitive motion injuries e.g. carpal tunnel syndrome, tendonitis, etc.?**

These injuries are covered if there is a casual connection between the job and the condition.

**6. What about heart attacks?**

Heart attacks, even occurring at home, may be covered if the job, the working conditions or the atmosphere such as emotional stress, caused or aggravated a heart condition. See also question No. 10.

**7. What about stress related injuries?**

For injuries occurring after 12/23/91, mental and emotional disabilities are compensable only where the predominant contributing cause is an event or series of events occurring within the employment. (Section 1(7A)). Further, any emotional or mental disability which arises principally out of a typical personnel action (e.g. promotion, demotion, transfer, termination), is not compensable unless the action constitutes an intentional infliction of emotional harm. (Section 29 and 1(7A)).

**8. What about injuries suffered at Company parties or picnics?**

For injuries after 1/1/86, Section 1(7A) excludes injuries incurred from “voluntary” participation in Company recreational activity including athletic events, parties and picnics.

**9. What about occupational diseases, such as asbestosis?**

Like any other injury, these diseases are compensable so long as there is a casual connection to employment. In the past, the big issue was whether the Employee’s comp rate should be based on his/her earnings when he/she was last exposed or based on his/her earnings when he/she eventually became disabled. Under Section 35C, added in 1986, the Employee’s rate will be based on his/her earnings as of the date when disabled, if at least five years have passed since the last exposure.

**10. What if I had a pre-existing condition which is aggravated or accelerated by my current job?**

For injuries occurring before 12/24/91, the general rule is that the Employer took the Employee “as is”. So, for example, an Employee who suffered disability or death as a result of a job condition which accelerated a pre-existing heart condition would receive workers’ compensation benefits. Likewise, the aggravation or worsening of an underlying



back condition as a result of a job related accident is also compensable.

For injuries occurring after 12/23/91, if a compensable injury combines with a non-work related pre-existing condition, then the resultant condition is compensable only if the work injury is a major, but not necessarily the predominant cause of the disability. (Section 1(7A)).

#### **IV. BENEFITS**

**11. If I cannot work, due to a covered injury, when do I become eligible for weekly benefits?**

You are eligible for weekly benefits, either for temporary total disability benefits (Section 34) or partial disability benefits (Section 35), so long as you are incapacitated from doing your job for at least five calendar days. (Section 29). The five days need not be consecutive.

**12. If I am out the five days, are the weekly benefits retroactive?**

For injuries occurring after 12/23/91, if you are out at least five calendar days, but less than 21 days, then you receive weekly benefits retroactive only to the sixth day of disability. You must be out of work 21 days or more, to receive benefits retroactive to the first day of disability. (Section 29).

**13. If I cannot do my job due to a covered injury, what are my weekly benefits?**

For injuries occurring before 12/24/91, Section 34 provides a worker that is temporarily totally disabled from doing his/her job, weekly benefits equal to 2/3 of his/her average weekly wage (AWW) based on his/her last 52 weeks of earnings. (Section 1(1)). *Example.* If a worker has earned \$9,360.00 in the 52 weeks before injury, his/her AWW is \$180.00 ( $\$9,360.00/52$ ). His/her WC rate is \$120.00 ( $\$180.00 \times 2/3$ ). Overtime earnings and earnings from most second jobs are also included in determining the AWW.

For injuries occurring after 12/23/91, you are entitled to 60% of your AWW. Using the above example, if the worker has been injured after 12/23/91, his W.C. rate would be \$108.00 ( $\$180.00 \times .60$ ). (Section 34).

**14. Is there extra compensation if the worker has dependents?**

Under Section 35A, a worker is entitled to \$6.00 for each dependent (*e.g.* children, spouse) so long as his/her WC rate does not exceed his/her average weekly wage or \$150.00/week. *Example:* If the Worker's WC rate is \$120.00, and she has two children and a spouse, she would be entitled to an additional \$18.00 per week. Dependents are defined in Section 35A.

**15. Are there minimum and maximum WC rates?**

Under Sections 34 and 1(11), the lowest WC rate is 20%

of the State Average Weekly wage (SAWW) as determined each October by the Department of Labor. Under Section 34, the maximum is the SAWW. The maximums during recent years are as follows:

<u>If Injured On or After</u>	<u>Maximum Weekly Benefits*</u>
10/1/88	\$444.20
10/1/89	\$474.47
10/1/90	\$490.57
10/1/91	\$515.52
10/1/92	\$543.30
10/1/93	\$565.94
10/1/94	\$585.66

\*Scheduled to increase every October 1st thereafter.

**16. Who will pay my medical bills?**

Under Sections 13 and 30, the Insurer must pay all reasonable medical expenses related to the injury. This could include payment for artificial limbs, travel costs, and prescription bills.

**17. What about medical bills if my injury does not keep me out of work five days?**

The Insurer is still liable to pay them. (Section 30).

**18. Can I choose my doctor or must I take whoever the Insurer provides me?**

Beginning 7/1/92, generally, the employee will be

allowed to choose his/her treating doctor and switch once. The same will apply to selection of specialists. Further selections will require the approval of the Insurer or an Administrative Judge. If the Insurer has an agreement with a preferred provider arrangement, the employee may be limited to choices among the health professionals working there.

**19. What if my injury only allows me to work at a lower paying job or less hours?**

*A. For Injuries Occurring between 1/1/86 and 12/23/91*

If you have a partial capacity work (e.g. you can do a different job or work a partial schedule), the Insurer must make up part of the difference in the loss of wages. For injuries occurring between 1/1/86 and 12/24/91, the worker will receive 2/3 of the difference between the AWW before the injury and the earnings after injury. (Section 35). *Example:* If a worker had an AWW of \$240.00 and is now working partially and earning \$150.00/week, the Insurer must pay \$60.00 ( $2/3 \times (\$240.00 - 150.00)$ ) per week.

*B. For Injuries Occurring after 12/23/91*

For injuries occurring after 12/23/91, the worker receives 60% of the difference between the AWW before the injury and the earnings after injury. Applying the above example to an injury post 12/23/91, the worker would receive a partial rate of \$54.00, ( $.6 \times (\$240.00 - \$150.00)$ ).

In addition, the partial rate cannot exceed 75% of the

worker's temporary total rate. For example, if a worker has an AWW of \$700.00, his Section 34 temporary total rate is \$420.00 (.6 x \$700.00). The highest the partial rate could be is \$315.00 (.75 x \$420.00).

**20. How long can I collect temporary total disability benefits?**

For injuries occurring between 1/1/86 and 12/23/91, the longest you can collect such benefits under Section 34, even with a doctor's certificate of disability, is 260 weeks. If the injury occurred before 1986, the most you could collect was 250 x the SAWW in effect on your date of injury. For injuries occurring after 12/24/91, the total number of weeks that can be collected is 156.

**21. How long can I collect partial disability benefits?**

For injuries occurring between 1/1/86 and 12/23/91, Section 35 allows up to 600 weeks of partial disability benefits in addition to benefits payable for periods of total disability.

For injuries occurring after 12/23/91, the total number of weeks collectible under Section 35 is 260 and the combined total of Section 34 and 35 benefits cannot exceed 364. The maximum total of Section 35 benefits can be increased to 520 if a person has lost 75% use of an eye, both eyes, the major arm or hand, a leg, or foot or suffers from a permanent life threatening physical condition or occupational disease; however, under such circumstances the combined total

of Section 34 and 35 benefits cannot exceed 520 weeks. (Section 35).

**22. What if my Employer says he wants me to return to a light duty job at the same or lesser pay?**

Under Section 8(2)(d), if the Employer has a suitable job which is approved by either your treating doctor or an Impartial doctor selected by the W.C. Board, then the Insurer can stop your weekly checks if you refuse to try a suitable job. However, if you attempt the job and, during the first 28 days of your return your disability prevents you from continuing work, then the Insurer must re-start your weekly checks if you provide the Insurer and your Employer the appropriate written notice. (Section 8(2)(c)). If the Employer terminates you during the first year of your return to light work, the Insurer will have to put you back on W.C. benefits unless the Insurer can prove otherwise.

**23. What if I collect Unemployment Benefits while I am waiting to get WC benefits?**

Effective 1/1/86, under Section 36B(1) a worker cannot receive total disability benefits if he collects unemployment. He can, however, collect both unemployment benefits and partial disability benefits. (Section 36B(2)). If fact, under Section 36B(2), the Insurer can force you to at least apply for unemployment if the Insurer is paying you partial disability benefits.

**24. What if I am collecting a pension or Social Security retirement benefits?**

If you are at least 65 years old and have been out of the labor force for at least two years and you are eligible for retirement benefits from Social Security or a pension plan partly or fully paid for by the Employer, then you are not entitled to receive either Section 34 or 35 weekly benefits, unless you can prove that but for the injury you would have remained active in the labor market.

**25. What if my injury is so serious, I can never return to my old job or other gainful employment?**

Section 34A provides that a permanently and totally disabled Employee can stay on WC benefits so long as the disability continues. The weekly WC rate is 2/3 of the Employee's AWW. In addition, a permanently and totally disabled Employee may be entitled to annual cost of living adjustments (COLA) (see paragraph No. 29).

**26. What if I was permanently partially disabled?**

The law provides no weekly benefits after the Section 34 and 35 benefits run out if you are permanently partially disabled. Only medical benefits will continue. (Section 30).

**27. Are there additional benefits for scarring, disfigurement and loss of function of body organs?**

Yes. Under Section 36, there are benefits available over and above any weekly disability benefits for scarring, disfig-

urement, and the loss of function of body organs. For injuries on or after 1/1/86, the benefits are based on a multiplier times the SAWW in effect. *Example:* The loss of one eye is compensable at 39 x SAWW. For pre-1/1/86 injuries, the dollar amounts were fixed by statute and by administrative schedules published by the DIA.

“For injuries occurring after 12/23/91, there is a distinction between disfigurement on face, neck or hands and disfigurement elsewhere on the body. If the scarring or disfigurement is on the face, neck or hands, Section 36 benefits are available even if the scarring or disfigurement resulted from surgery. If the scarring or disfigurement is elsewhere on the body, benefits are not available if the scarring or disfigurement resulted from surgery, unless the surgery involved a skin graft, bone graft or vein harvest. If scarring or disfigurement elsewhere on the body was not caused by surgery, benefits are available.”

**28. If I die, can my family still collect my Workers' Comp?**

If the death stems from the WC injury, a widow and dependents of remarried spouses can collect weekly benefits. (Section 31). Further, any due but unpaid Section 36 benefits (for disfigurement or loss of function) also go to the surviving family. There are also special provisions for death caused by brain damage. Payments of medical expenses of the deceased are also required. Moreover, under Section 33



there is an allowance for burial expense. For injuries occurring before 12/24/91, the allowance was \$2,000.00 and for injuries occurring after 12/23/91, the allowance is \$4,000.00.

**29. Are there Cost-of-Living Adjustments (COLAS) available?**

Yes, but only for recipients of the following benefits:

(a) Section 34B provides a COLA for those collecting permanent and total disability benefits under Section 34A. COLA benefits are calculated annually on October 1. To be eligible for a COLA benefit, you must be receiving Section 34A benefits, and have a date of injury at least 24 months preceding the October review date. COLA benefits may be denied or reduced if you are receiving Social Security Disability benefits.

(b) Section 34B also provides a COLA for those receiving Section 31 survivor benefits under the same conditions as stated in paragraph (a).

(c) For injuries occurring between 1/1/86 and 12/23/91, Section 35F provides a COLA for those collecting partial disability benefits if your date of injury is at least 36 months prior to the review date. (*i.e.* October 1st). For injuries occurring after 12/23/91, there is no Section 35F COLA.

**30. What are my rights to retraining or re-employment assistance?**

The Office of Education and Vocational Rehabilitation

(OEVR) was established by Sections 30-30I to provide employees with vocational assistance to return to work. The OEVR first determines whether return to work with the current Employer is feasible by job modification, job reassignment, or job restructuring. If return to the former Employer is not possible and other jobs elsewhere are unavailable due to the employee's disability, then the OEVR may require the Insurer to pay for up to 104 weeks of retraining. Retraining programs can extend beyond 104 weeks, with the Insurer's agreement.

The OEVR can require the employee to participate in a meeting and an appropriate vocational rehabilitation program. Failure to comply by the worker, can result in a 15% reduction in weekly workers' compensation benefits. (See Question 48(b)(iii)).

### **31. What if the Employer willfully caused my injury?**

Under Section 28, an Employee can receive double benefits if the Employer intentionally or willfully created a condition which caused the injury. *Example:* An Employer forces a worker to work in a ditch which is not properly shored or sloped under the Department of Labor Regulations. Double benefits also are available to injured underage workers when their Employer violates certain child labor laws.

## **V. JOB RIGHTS**

### **32. Can I be fired for asserting my rights under the Act?**

Section 75B makes it illegal to discriminate against a

worker who has asserted rights under the Act. For example, it would be illegal to fire an Employee or refuse to hire an Employee who has applied for Workers' Comp benefits. However, an Employee who has lump sum settled his/her case may be precluded from returning to his former Employer for one month for each \$1,500.00 included in the settlement for future weekly benefits. (Section 48(4)).

**33. Can my Employer refuse to take me back to work?**

If you have a union, the union contract may provide you reinstatement rights when you are ready to return to work. In addition, Section 75A requires Employers to give preference in hiring to those who lost a job due to a WC injury over those not yet employed if there is a suitable job. Section 75B(1) gives an injured worker the status of a handicapped worker under the Handicap Discrimination Act if he/she can perform the essential functions of a particular job with reasonable accommodations.

**34. If I am fired, can I still collect WC?**

Though this adds an additional complication to your case, you can still collect Workers' Compensation if you can prove that you are disabled due to a job related injury. And, you may have additional protections as outlined in Paragraph 22 above.

## **VI. PROCEDURE**

**35. What should I do first after being injured?**

Obviously, medical attention is your first priority. It is

also crucial to file an accident report and to report your injury to your Employer. If you fail to do this, you may experience difficulty receiving benefits, and your claim may be denied by the Workers' Compensation Insurer. Notice of the injury must be given to the Employer and the Insurer as soon as possible. (Section 41).

**36. Do I need to file a claim?**

No. Under Section 6, your Employer is supposed to fill out and send a Notice of Injury to the Insurer, to you and to the DIA. This Notice must be sent within seven calendar days, excluding Sundays and holidays after notice of an injury that has lasted a least five calendar days. The Employer can be fined for filing late.

**37. What is the DIA supposed to do when it gets the Employee's Notice?**

Under Section 6A, the DIA must send the worker a booklet describing WC rights.

**38. What is the Insurer supposed to do when it gets the Employer's Notice?**

Under Section 7(1), the Insurer has 14 days after receipt of the notice to either pay benefits or send out a Notice stating the reasons it is denying payment. If the Insurer misses these deadlines, it may have to pay benefits plus a penalty unless the lateness was beyond the Insurer's control. (Section 7(2)).

**39. What if the Employer never files the Notice of Injury?**

A claim must be filed. Under Section 7(1), the Insurer has 14 days to either pay or deny after receipt of a claim.

**40. If the Insurer denies benefits after getting notice what can I do?**

A claim for benefits must be filed. Section 10 requires that 30 days have passed since the beginning of lost time from work before a Claim can be filed. An attorney or other representative can prepare a claim for you and represent you in later proceedings.

**41. What happens after I file my Claim?**

Approximately two weeks after receipt of your Claim, the DIA will send you a Notice asking you to come to a Conciliation.

**42. Where will the Conciliation occur?**

The DIA has set up Regional Offices in Boston, Fall River, Lawrence, Worcester, and Springfield. Your Conciliation will occur at the office closest to you.

**43. What happens to a Conciliation?**

There will be an informal meeting at the DIA office. Representing the DIA will be a Conciliator. The Insurer will be there and will usually be represented by a lawyer. You will

be required to bring all the medical records you have. You can also be represented by lawyer. The Conciliator will try to solve the dispute by talking with the parties. Although he has no authority to issue orders, the Conciliator will write down his recommendations.

**44. What happens if the problem is not solved at Conciliation?**

Under Section 10, your claim will be scheduled for a Conference before an Administrative Judge (AJ).

**45. What happens at a Conference?**

You will get another notice telling you of the time, date and place of the Conference. Under Section 10A, the AJ has the authority to issue a Temporary Order granting or denying benefits. The AJ will listen to both lawyers (the worker's and the Insurer's), review the available medical records and will usually ask the worker some questions.

**46. What happens after the Conference?**

If either party is unhappy with the Conference Order, there will be a Hearing pursuant to Sections 11 and 11B if an appeal is filed within 14 days of the order. The Hearing will be more formal than the Conference. There will be a stenographer. The worker and other non-medical witnesses will testify and be subject to cross-examination. The AJ will then give the parties time to take depositions of the doctors

involved. After receipt of the medical evidence, the AJ will issue a Decision.

**47. What are the next appeal steps after the Hearing?**

Under Sections 11C and 12, appeals can be made after a Hearing to the Industrial Accident Review Board and afterwards to the State Courts.

**VII. DISCONTINUANCE OF BENEFITS**

**48. After I start receiving benefits, can the Insurer stop my benefits?**

(a) *One Hundred Eighty days or less.* An Insurer can pay benefits for 180 days without prejudice, and can stop payment within those 180 days based upon:

- (i) the worker's actual income, or
- (ii) the Insurer gives at least 7 days written advance notice.

*Note:* These 180 days can be extended by agreement to a year with agreement of the DIA.

(b) *After 180 days of payment,* the Insurer can stop Section 34 benefits if:

- (i) you have actually returned to work; or
- (ii) your treating doctor or an Impartial Doctor

selected by the WC Board certifies in writing that you are capable of returning to your prior job or other suitable work which the Employer indicates in writing is available. (Section 8(2)(d); or

(iii) you have refused to meet or participate in Vocational Rehabilitation services, if appropriate, the Insurer can reduce your weekly checks by 15%. (Section 8(2)(f)); or

(iv) you have failed to report to the Insurer any earnings. (Section 8(2)(h)); or

(v) you have failed to attend medical evaluations requested by the Insurer. (Section 8(2)(i)); or

(vi) You have been incarcerated. (Section 8(2)(j)).

**49. If I do not fall into any of the categories listed in paragraph 48, can the Insurer stop or reduce my benefits in any other way?**

Under Section 8(2), the Insurer can obtain an Order from the DIA approving discontinuance or reduction of benefits. Such an Order would be appropriate, if, for example, the worker is no longer disabled.

**50. What procedure must the Insurer follow to obtain a Discontinuance or Reduction Order from the DIA?**

The Insurer must file a Complaint. It is the same format



as the Employee's Claim. After that, the procedure is the same — Conciliation, Conference, Hearing, etc.

**51. Can the Insurer expedite a Decision if it takes too long?**

Yes. Under Section 8(4) the Insurer can ask for the DIA to set up an Impartial examination if a decision has not been issued within 60 days after Conciliation.

**52. Can voluntary agreements be reached during the process?**

Yes. If the parties are able to voluntarily resolve the issues anywhere during this procedure, they complete an Agreement form. These agreements can be enforced in Court under Section 19.

**53. Is there anything I can do if the Insurer tried to stop or reduce my weekly benefits and I am still disabled?**

You have the right to present and defend your position at all proceedings. Further, you have the right to have an attorney or other representative present your case.

## **VIII. LUMP SUM SETTLEMENTS**

**54. What are Lump Sum Settlements?**

Lump Sum Settlements are agreements in which the Insurer pays the worker a "lump sum" of money in exchange

for the worker releasing the Insurer from having to pay most future benefits.

**55. If my injury occurred on or after 11/1/86, what are the Lump Sum Rules?**

(a) If the case is lump sum settled before liability has been imposed or accepted by the Insurer, then the settlement relieves the Insurer of all future responsibilities—*e.g.* weekly benefits, medical bills, etc. There is a narrow exception for later reopening medical claims. (Section 48).

(b) If liability has been imposed or accepted by the Insurer, the Insurer still remains liable for all related future medical expenses and vocational benefits even after a settlement. However, any request for vocational rehabilitation benefits must be made within two years of the Lump Sum approval. (Section 48).

**56. What if my date of injury predates 11/1/86?**

The Lump Sum will end all future obligations by the Insurer to the worker.

**57. Can the Lump Sum Agreement contain certain provisions releasing the Employer of certain claims?**

No. Under Section 48, the Lump Sum Agreement cannot contain language that would prevent the Employee from:

(i) employment with any employer; however, the employee is deemed disqualified from returning to his/her former Employer for one month for each \$1,500.00 included the lump for future weekly benefits.

(ii) receiving any benefits due from the Employer;

(iii) bringing a future WC claim; or

(iv) bringing a wrongful discharge or breach of contract

**58. What is the procedure for approval of Lump Sum Agreements?**

An agreement in writing is prepared and presented for approval by the DIA which will review the settlement to assure that it is in the Employee's best interests. If so, the agreement will be approved and payment will be made by the Insurer under the terms of the agreement.

## **IX. ATTORNEY'S FEES**

**59. What are the applicable attorney's fees and who pays them?**

**A. *DIA Litigation Fees***

The Insurer pays all attorney's fees if the case is resolved in the employee's favor, with the following exceptions:

(i) For injuries occurring after 12/23/91, if the employee receives a cash payment as a result of a favorable resolution, then the Insurer can deduct up to 22% of the amount payable for the first month to pay the attorney's fee;

(ii) When an Employee appeals to the Reviewing Board, the employee is responsible for the Attorney's fee.

(iii) For injuries occurring before 11/1/86, the employee is responsible for the attorney's fees, except where otherwise ordered by the Industrial Accident Board.

**B. Lump Sums:**

1. Injuries after 11/1/86

(i) If settled before liability is established, the Employee pays up to 15% of Lump Sum;

(ii) If settled after liability is established, the Employee pays up to 20% of Lump Sum.

2. For Injuries before 11/1/86, the Employee pays up to 20% of Lump Sum.

**C. Court Action:**

Reasonable fees are payable by Insurer if approved by the court.

## **X. THIRD PARTY LAWSUITS AND RELATED LAWSUITS**

### **60. What is a "Third Party Lawsuit"?**

A third party lawsuit is a claim against someone other

than your Employer or a co-worker, whose negligence caused your injury while you were working. The right to make a claim against a third party does not affect a worker's right to receive WC benefits. The benefits available in a third party negligence claim include the right to recover for medical expenses, lost earnings and pain and suffering.

If a recovery is made against a third party, however, the Workers' Compensation Insurer who is paying WC benefits, has a right to recover the benefits which it paid the injured Employee, out of any recovery obtained by the Employee, out of any recovery obtained by the Employee against the third party.

#### **61. What are some examples of Third Party Claims?**

(a) *Machinery*: If your injury was caused by machinery, a third party claim against the manufacturer, distributor or maintainer of the equipment may be possible if the machinery was negligently designed, manufactured or lacked proper warnings.

(b) *Other Workers or Contractors*: If your injury is caused by the negligence of another worker who is not your co-worker, or by another contractor on a construction project, you may have a right to bring a claim against that person for your injuries.

(c) *Auto Accidents*: If you are involved in an automo-

bile accident while you are performing your job, which was caused by the negligence of another person, you may have a right to recover against that person so long as it is not your Employer or a co-worker.

**62. What if I am injured by the negligent acts of a co-worker?**

You cannot sue a co-worker whose negligence caused your injury if the injury arose out of and in the course of your employment.

**63. Does my spouse or my family have a right to sue my Employer for loss of consortium, loss of parental society and negligent infliction of mental distress if the Employer caused the injury?**

Under the *Ferriter* case, a 1980 decision, these rights were available. However, these rights were largely abolished for injuries occurring on or after 1/24/86. (Section 24).

**64. What if I am working on a construction project, and am injured because of the negligence of another subcontractor or the general contractor?**

In addition to your WC Claim you may have a right to sue the general contractor or the subcontractor. (Section 15).

**65. What if the Employer injures a worker's reputation and dignity?**

A court action may be available against an Employer that engages in defamation, slander, malicious prosecution, false arrest or false imprisonment.