

PENNSYLVANIA WORKERS' COMPENSATION GUIDE

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MISSION STATEMENT

Freeburn & Hamilton is committed to providing excellent legal service in the pursuit of the maximum compensation permitted by law. This firm proudly represents only injured workers. It does not represent employers or workers' compensation insurance carriers.

OTHER AREAS OF PRACTICE

Freeburn & Hamilton also represents clients in third party actions such as:

- **Auto Accidents**
- **Defective Products/Equipment**
- **Truck Accidents**
- **Wrongful Death**
- **Negligence**
- **Slip & Fall**
- **Hunting Accidents**
- **Dog Bites, etc.**

DEDICATION

This book is dedicated to the memory of our colleague, partner and friend, Robert D. Hamilton, Esquire.



July 4, 1967-October 7, 2005

FREEBURN & HAMILTON

PERSONAL INJURY AND WORKERS' COMPENSATION ATTORNEYS



Richard Freeburn was born and raised in the Harrisburg area. He graduated from Indiana University of Pennsylvania (Cum Laude) in 1976 and the University of Pittsburgh School of Law in 1979. Mr. Freeburn clerked for Judge Richard B. Wickersham on the Pennsylvania Superior Court until 1982, and then entered the private practice of law. Mr. Freeburn initially represented insurance companies doing insurance defense personal injury work. In 1988, he became a partner in a plaintiff's personal injury law firm, and has represented personal injury victims against insurance companies ever since. Mr. Freeburn is admitted to practice before the Pennsylvania and Federal Courts, and is a member of his local, state and American Trial Lawyer Associations. Mr. Freeburn has been an author and speaker for the Pennsylvania Bar Institute and the Pennsylvania Trial Lawyers Association and other professional organizations. Mr. Freeburn is privileged to represent personal injury victims and will fight to get them the compensation they deserve.



Stephen A. Schneider graduated from Lehigh University in 1989 with a bachelor of science in business and economics. Following graduation, Steve worked as a licensed Certified Public Accountant for the Auditor General of Pennsylvania from 1989 through 1993. He then attended the Widener University School of Law and the Widener University School of Business Administration and graduated with both Juris Doctor and Masters in Business Administration degrees in 1996. Steve is admitted to practice before the Supreme Court of Pennsylvania, the Supreme Court of New Jersey, the U.S. District Court for the Middle District of Pennsylvania, and the U.S. Court of Appeals for the Third Circuit. Steve is a member of the Pennsylvania and Dauphin County Bar Associations, as well as, the Pennsylvania Trial Lawyers Association.



Larry Barone has conducted a worker's compensation and general liability practice since 1993. He spent the early years of his law practice representing only injured workers and plaintiffs. He has the unique prospective of having recently joined Freeburn and Hamilton after nearly nine years of representing employers and insurance carriers in litigating, negotiating and settling worker's compensation cases and civil litigation matters. He now resumes his previous practice of solely representing claimants and plaintiffs. In addition to his worker's compensation experience, Larry has taken medical and professional malpractice, auto, premises liability and product liability lawsuits to trial. A graduate of Dickinson College and Ohio Northern University College of Law, Larry is a member of the United States Supreme Court Bar. In addition, he is licensed to practice before the Supreme Court of Pennsylvania, the United States Court of Appeals for the Third Circuit and the United States District Courts for the Middle and Western Districts of Pennsylvania. Larry has been a member of Widener University School of Law's faculty for their Intensive Trial Advocacy Program and a lecturer for the National Business Institute. He has been a presenter at various seminars addressing worker's compensation and medical concerns and is a member of the Pennsylvania Bar Association, the Dauphin County Bar Association and the Pennsylvania Trial Lawyer's Association.



Christina Bradley graduated from the Pennsylvania State University with a Bachelor of Science Degree in Administration of Justice in 1999, and from the Pennsylvania State University Dickinson School of Law in 2002. Prior to joining Freeburn and Hamilton, Christina practiced for five years in the areas of workers' compensation and civil litigation representing insurance carriers and employers. Christina joined Freeburn & Hamilton on October 15, 2007 and represents only injury victims against insurance carriers and employers. Christina is licensed to practice before the Supreme Court of Pennsylvania. She is a member of the Pennsylvania Bar Association, the Dauphin County Bar Association and the Pennsylvania Trial Lawyers Association.

DISCLOSURE

The information provided in this book represent general principles of law and is not specific legal advice from an attorney to you. No attorney-client relationship is created by providing the information contained in this book. You should never base a legal decision, to act or not act, on general information such as the information provided in this book. Proper legal advice requires close attention to detailed facts and thorough knowledge of all facts important to forming a judgment on the matter being considered. Before taking action on any legal issue, you are urged to hire an attorney by reaching a formal agreement with the attorney to advise and represent you.

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I. BACKGROUND OF WORKERS' COMPENSATION

The Pennsylvania Workers' Compensation Act was established in 1915 for the purpose of ensuring the prompt payment of lost wages and medical expenses to workers injured on the job. The Pennsylvania Workers' Compensation Act is a compromise whereby injured workers are supposed to receive prompt payment of a percentage of their wage loss and the payment of their medical expenses without having to establish that their employer was at fault for their injury. In return, the injured worker gives up the right to sue their employer for other damages such as pain and suffering.

Pennsylvania law requires all employers to obtain workers' compensation insurance coverage. Employers who fail to obtain workers' compensation insurance coverage may be subject to lawsuits by injured workers and to criminal prosecution.

Workers' compensation insurance coverage begins on the first day that the worker is on the job, and covers work injuries sustained by the worker during the entire period while working for the employer. In addition, the employer and its insurance company may be responsible to pay workers' compensation benefits for work related injuries, even after the job is terminated.

The legal rights, entitlements, and obligations provided by the Pennsylvania Workers' Compensation Laws apply to essentially all work injuries that occur in Pennsylvania. Pennsylvania coverage also extends to work injuries that occur outside of Pennsylvania when additional jurisdictional requirements are met. Federal Workers' Compensation Claims are covered by a different set of laws. In addition, certain types of casual and domestic employment are excluded from Pennsylvania coverage.

II. GENGERAL QUESTIONS ABOUT THE WORKERS' COMPENSATION INJURY

A covered work injury is an injury or disease sustained by the worker that arises in the course and scope of employment and is causally related to the injured worker's employment. The Workers' Compensation Act and case law define these terms and the circumstances and facts necessary to prove a covered work injury.

The Act covers all injuries "arising in the course and scope of employment." This includes all injuries sustained on the employer's premises, as well as off-premises injuries incurred while engaged in the furtherance of the employer's business. All reasonable and necessary medical bills must be paid, together with wage loss benefits once the disability period exceeds seven days. Psychological injuries may also be covered, but particular standards must be met in order establish a claim. In addition, heart conditions may constitute a work injury, but again, particular standards must be met.

FREQUENTLY ASKED QUESTIONS

1. AM I ENTITLED TO WORKERS' COMPENSATION BENEFITS FOR A PRE-EXISTING CONDITION THAT IS AGGRAVATED BY A WORK INJURY?

Yes. The definition of a covered work injury includes a pre-existing or underlying condition that is aggravated, accelerated, and/or becomes symptomatic as the result of a work accident, activity, or exposure.

2. ARE HEART ATTACKS AND RELATED HEART PROBLEMS CAUSED BY PHYSICAL TRAUMA OR EXERTION AT WORK COVERED?

Heart attacks, episodes of angina, and other heart related problems may be covered work injuries if they are caused by physical trauma or exertion related to injured workers' employment.

3. IS EXPOSURE TO CHEMICALS, FUMES, OR OTHER SUBSTANCES AT WORK COVERED?

Yes. Injuries, diseases, and illnesses that are causally related to exposure to chemicals, fumes, or other substances in the work place are covered work injuries. All employers and chemical suppliers doing business in Pennsylvania must provide information about the identity and hazards of hazardous substances used in the workplace. The identity of chemicals used in the workplace must be made available to employees and the public. If you have developed a condition that may be related to exposure to chemicals, fumes, or other substances at work, or you are concerned about the nature and extent of your exposures in the work place, speak with your employer and your physician.

4. ARE PSYCHOLOGICAL INJURIES COVERED?

Psychological injuries fall into different categories. The first category is the psychological injury that results from a physical work injury. Another type of psychological injury is one that results from stress in the work place. The worker must prove that the psychological injuries resulted from an "abnormal working condition" which is very difficult to establish.

Contact **Freeburn & Hamilton** to discuss whether you have sustained a work-related injury.

III. WORKERS' COMPENSATION WAGE LOSS BENEFITS

The employer/insurance company is required to pay the injured worker for a percentage of their lost wages, up to a maximum limit, beginning on the 8th day of wage loss. If the injured worker loses more than 14 days of work, they are entitled to recover the first 7 days of wage loss benefits.

FREQUENTLY ASKED QUESTIONS ABOUT WAGE LOSS BENEFITS

1. HOW MUCH AM I ENTITLED TO WHEN I'M NOT WORKING AT ALL DUE TO MY WORK INJURY?

A formula is used to calculate your pre-injury average weekly wage and to determine your workers' compensation wage loss rate. There are several different formulas that may be used to calculate your pre-injury average weekly wage; it is important to ensure that the formula that is used most accurately reflects your weekly earnings prior to your work injury.

If you have more than one (1) employer at the time of injury, the wages from all employers are included for purposes of calculating your pre-injury average weekly wage.

Your pre-injury average weekly wage is then applied to a rate schedule established by the Bureau of Workers' Compensation, which is updated every year.

A Maximum Compensation Rate exists, and this is the maximum amount of weekly benefits that you can receive no matter how high your pre-injury average weekly wage.

Contact **Freeburn & Hamilton** to discuss the amount of money you are entitled to receive from your employer/insurance company.

2. AM I ENTITLED TO PARTIAL WAGE LOSS BENEFITS IF I RETURN TO WORK, BUT I'M MAKING LESS THAN I WAS AT THE TIME OF MY INJURY?

If you have returned to work but your wages are less than your pre-injury average weekly wage, and your loss of earnings is related to your work injury, then you would be entitled to partial disability benefits. Partial disability benefits, equaling two-thirds (2/3) of the difference in wage loss measured between your return to work earnings and your pre-injury average weekly wage up to the maximum compensation rate are payable for up to a maximum of five hundred (500) weeks of partial disability.

3. IF I TRY TO GO BACK TO WORK BUT CAN'T DO THE JOB DUE TO MY INJURIES, AM I ENTITLED TO WORKERS' COMPENSATION WAGE LOSS BENEFITS?

Yes, if: (1) the employer's/insurance company's liability for your workers' compensation claim has been or can be legally established; (2) you have not "signed off" of your claim or exhausted the five hundred (500) weeks of partial disability; and (3) you are able to prove that you are unable to work due to your work injuries.

We recommend that you get a doctor's excuse before you take leave from work, that you notify your supervisor or employer in writing, and that you give them the disability note from your doctor.

4. HOW LONG IS MY EMPLOYER REQUIRED TO PAY MY WORKERS' COMPENSATION WAGE LOSS BENEFITS?

You are entitled to wage loss benefits for as long as you are totally disabled due to a work injury. If you are partially disabled due to a work injury, you are entitled to partial disability benefits for five hundred (500) weeks or until you have reached a full and complete recovery from your work injury, whichever comes first.

In addition, the Workers' Compensation Act provides the employer/insurance company with the opportunity to have you, the injured worker, undergo an Impairment Rating Evaluation after you have received 104 weeks of Workers' Compensation Benefits. An Impairment Rating Evaluation is a tool whereby the employer/insurance company may be able to place a cap on the number of weeks that you will be entitled to receive Workers' Compensation wage loss benefits. If you are scheduled for an Impairment Rating Evaluation, contact **Freeburn & Hamilton** to ensure that your rights are protected.

5. UNDER WHAT CIRCUMSTANCES MAY MY EMPLOYER STOP OR REDUCE MY WORKERS' COMPENSATION WAGE LOSS BENEFITS?

Once your employer/insurance company has accepted liability for your workers' compensation claim, your employer/insurance company must follow certain procedural steps in order to reduce or stop benefits. If they don't follow these steps, we can take action to reinstate

your wage loss benefits, with interest, and with the imposition of monetary penalties. Don't sign any documents without reviewing them first with **Freeburn & Hamilton**.

6. AM I ENTITLED TO WORKERS' COMPENSATION WAGE LOSS BENEFITS IN ADDITION TO OTHER BENEFITS?

Yes, however this is a very complicated issue that requires careful analysis, as well as coordination and consideration of the timing, benefits, and disadvantages of receiving severance, unemployment, social security, and/or pension payments while receiving workers' compensation wage loss benefits. You should consult **Freeburn & Hamilton** to ensure that your rights are protected.

7. AM I ENTITLED TO WAGE LOSS BENEFITS IN ADDITION TO SPECIFIC LOSS BENEFITS DUE TO THE LOSS OF A BODY PART OR DISFIGUREMENT OF THE HEAD OR NECK?

Injured workers may be entitled to wage loss benefits in addition to "Specific Loss" compensation benefits for an actual loss or loss of use of a body part, or disfigurement of the head and neck, for the same work injury occurrence. In this frequently occurring situation, the injured worker must suffer disabling injuries separate and distinct from the Specific Loss injury. See Section V of this Guide for important information regarding specific loss benefits.

8. ARE OTHER BENEFITS PROVIDED BY MY EMPLOYER SUCH AS SICK AND ACCIDENT BENEFITS THE SAME AS WORKERS' COMPENSATION BENEFITS?

No, Sickness and Accident benefits, Short Term Disability, and/or Long Term Disability benefits are not the same as workers' compensation benefits. Moreover, if you are receiving Sickness and Accident benefits, Short Term Disability, and/or Long Term Disability benefits for a work related disability, in lieu of workers compensation benefits, your rights are not protected. If you apply for Sickness and Accident benefits for a work related injury, you should state in the application that you believe the injury or condition is work related. Sickness and Accident benefit programs typically pay less than workers' compensation benefits. Receipt of Sickness and Accident benefits may affect the amount of Workers' Compensation Benefits you receive, and Sickness and Accident benefits are taxable, whereas workers' compensation benefits are not taxable.

9. IF MY EMPLOYER TERMINATES MY EMPLOYMENT OR LAYS ME OFF AFTER I SUSTAIN A WORK INJURY, AM I ENTITLED TO WORKERS' COMPENSATION WAGE LOSS BENEFITS?

If you have physical restrictions due to a work injury and lose your job through no fault of your own, you are entitled to the reinstatement of your workers' compensation wage loss benefits. We recommend that you have your doctor document your physical restrictions and limitations. Also, document the fact that you are performing modified or light duty work and your good work record. Do not give your employer the ability to terminate your employment for reasons that are your fault.

IV. WORKERS' COMPENSATION MEDICAL BENEFITS

Reasonable and necessary medical expenses related to your work injury must be paid by the employer/insurance company regardless of the duration of required treatment and even if the injured worker has not lost time from work. Under certain circumstances, the employer/insurance

company may require you to treat with an employer panel doctor for ninety (90) days. The employer/insurance company is also permitted to appropriately contest the reasonableness and necessity, as well as the causation of your medical treatment.

FREQUENTLY ASKED QUESTIONS ABOUT WORKERS' COMPENSATION MEDICAL BENEFITS

1. IS MY EMPLOYER REQUIRED TO PAY FOR MY WORK INJURY RELATED MEDICAL BILLS?

The health care provider must submit periodic reports along with all billing information on forms prescribed by the Workers' Compensation Bureau. The employer/insurance company is required to pay for the medical treatment within thirty (30) days after the required forms have been submitted to insurance company. If the company fails make timely payment for the medical treatment penalties may be assessed.

2. HOW LONG MUST MY EMPLOYER PAY FOR MY MEDICAL BILLS?

Once liability for your work injury is established, the employer/insurance company is responsible for the payment of all reasonable and necessary work injury related medical treatment until it is judicially determined that you are fully and completely recovered from your work injury.

3. CAN MY EMPLOYER CONTEST MY MEDICAL BILLS?

Yes. The employer/insurance company may contest the reasonableness and necessity [but not causation] of the medical treatment during the thirty (30) day payment period discussed above, by filing a Request for Utilization Review with the Bureau of Workers' Compensation. If the employer/insurance company fails to file the Utilization Review Request during this thirty (30) day period, the employer/insurance company waives its right to contest the reasonableness and necessity of the treatment at issue. By properly filing the Request for Utilization Review, the employer/insurance company's liability for payment of the medical treatment at issue is deferred until a determination is made by a Utilization Review Organization ("URO") assigned by the Workers' Compensation Bureau. The requested review may be prospective, concurrent, or retrospective. Following completion of the review, a report is issued containing the URO's findings and conclusions. The employer/insurance company is required to pay the cost of the Utilization Review; even the injured worker files the request for Utilization Review. Any party, including the provider under review, may then appeal the URO's decision.

The employer/insurance company may also contest medical bills based on causation. If, on the face of the medical bill, it appears that the medical treatment was related to the work injury, the employer's/insurance company will have the burden of proof that it wasn't related to the work injury. If, however, the bill does not appear on its face to be causally related to the work injury, the employer/insurance company can refuse payment of the bill, and it will be the employee's burden to establish the causal relationship between the medical treatment and the work injury. An employer/insurance company that questions causation of medical bills may be subject to monetary penalties for unilaterally ceasing to pay the medical bills if a Workers' Compensation Judge later finds that the medical treatment was causally related to the work injury. However, if a Workers' Compensation Judge later determines that the medical treatment was not causally related to your work injury, the employer/insurance company would not be responsible to pay the medical bills, and would not be subject to monetary penalties.

4. AM I REQUIRED TO TREAT WITH THE COMPANY DOCTOR?

Employers may establish a list of designated health care providers. If the list is properly posted and noticed to you by the employer, you are required to receive medical treatment from one of the designated health care providers for the work injury for a period of ninety (90) days from the date of the first treatment for the work injury. In order to be effective, the list must have been established before the work injury occurred, and the employer must have provided the employee with a clearly written notice of his or her rights and responsibilities with regard to medical treatment following a work injury. Your employer may not require you to treat with any one specific provider on the list. Your employer may also not restrict you from switching from one designated provider to another designated provider during the ninety (90) day period. You are free to choose to treat with any provider on the list. Emergency medical care is exempt from the designated health care provider requirement, but only for the period of emergency. The posted list must designate at least six (6) health care providers, of which at least three (3) must be physicians. Each health care provider's name, address, telephone number, and area of medical specialty must be included on the list. The designated providers must also be geographically accessible, and their medical specialties must be appropriate for the anticipated work injuries of the workers. If the posted list of designated providers does not contain a provider with the specialty necessary for the treatment of the injured worker, including chiropractic treatment, the injured worker may treat with a non-listed healthcare provider of his or her choice with the necessary specialty. If there is no posted list of designated providers, or if the list has not been properly posted and noticed to the injured worker prior to the work injury, the injured worker may treat with any healthcare provider and the employer/insurance company must pay for the treatment if it is reasonable, necessary, and causally related to the work injury.

5. MAY A HEALTHCARE PROVIDER BILL ME DIRECTLY FOR WORK INJURY RELATED MEDICAL TREATMENT?

No. A healthcare provider may not hold you liable for covered medical bills related to medical care or services provided to you in connection with a covered work-related injury. This also applies to medical treatment that is challenged under Utilization Review provisions on the basis that the treatment is not reasonable or necessary. In addition, a healthcare provider may not bill or otherwise attempt to recover from you the difference between the healthcare provider's charge and the amount allowed by the Pennsylvania Workers' Compensation Act. A different scenario arises however if there is either a determination that the medical treatment at issue is not causally related to your work injury, or if it would reasonably appear that it has not yet been determined that the type of medical treatment at issue is indeed causally related to your work injury. In either of these circumstances, a healthcare provider may be justified in holding you responsible for the medical bills related to the medical care or services rendered by the provider.

6. MAY MY EMPLOYER DIRECT THE COURSE OF MY MEDICAL TREATMENT OR REQUIRE ME TO SUBMIT TO MEDICAL PROCEDURES?

The course of your medical treatment for your work injury is between you and your treating physician, and the employer/insurance company or their agents, including medical management rehab nurses, do not have the right to interfere with your course of treatment, or with your relationship with your treating physician. As long as the treatment is reasonable, necessary, and causally related to your work injury, the employer/insurance company must pay for the treatment. However, if you refuse recommended reasonable medical services, you may forfeit your right to wage loss compensation benefits for a work injury. If the proposed medical treatment offers a high probability of success and only minimal risk to you, you may lose your right to work loss benefits if you refuse the treatment. It is important to note however that the insurance company/employer

may not raise the issue of your refusal of reasonable medical treatment where the employer/insurance company has not yet accepted liability for your claim.

7. DO I HAVE TO ALLOW THEIR NURSE TO COME TO MY DOCTOR VISITS?

No. We recommend that you advise the nurse that he/she is not permitted to come into the examining room, and is not permitted to talk to the doctor. Often the nurse will come to the appointment and attempt to speak with the doctor after your examination or after you leave. They often claim to you and the doctor that this is permitted because the workers' compensation carrier is paying for the treatment. This is incorrect. They are not permitted to communicate with your doctor unless you authorize them to do so. We recommend that you make it clear that they are not authorized to do so, and that you tell your doctor that (s)he does not have your authorization to talk to the nurse.

V. WORKERS' COMPENSATION SPECIFIC LOSS BENEFITS

Specific Loss benefits are payable to injured workers for an actual loss of a body part such as an amputation. However, an amputation is not necessary in order to receive specific loss benefits. Specific loss benefits are also payable for the permanent loss of use of a body part for all practical intents and purposes. Loss of hearing, whether total or partial, loss of vision in one or both eyes, and permanent scarring and other disfigurement of the head and neck are payable. Specific Loss benefits are payable even if there is no loss of earnings. The Pennsylvania Workers' Compensation Act and case law define and enumerate the schedule of benefits payable to injured workers for Specific Loss injuries, and the circumstances and facts necessary to establish a right to benefits.

The healing period is in addition to the specific loss payments, but ends when the claimant returns to employment without impairment in earnings, or on the last day of the specified healing period, whichever is earlier.

The loss of both hands, both arms, both legs, or both eyes constitutes total disability unless otherwise determined by the Board.

To be compensable, disfigurement must be serious and permanent. The disfigurement must be of the head, neck, or face, and must be of such a nature as to produce an unsightly appearance. The amount of compensation for disfigurement is for a period, determined by the Workers' Compensation Judge after viewing the condition, up to a maximum of 275 weeks at the claimant's appropriate rate.

Where an employee receives other injuries, separate and apart from the enumerated specific losses, the employee's specific loss benefits commence after the expiration of the period of temporary total disability which is caused by the other injuries. However, in that event, the employee does not receive compensation for the healing period.

If the employee suffers two or more specific losses, the employee is compensated for the largest single period rather than the aggregate of the healing periods.

FREQUENTLY ASKED QUESTIONS ABOUT SPECIFIC LOSS BENEFITS

1. AM I ENTITLED TO SPECIFIC LOSS BENEFITS IN ADDITION TO WAGE LOSS BENEFITS?

Injured workers may be entitled to "Specific Loss" benefits in addition to wage loss benefits for the same work injury occurrence if they suffered disabling injuries separate and distinct from the Specific Loss injury. An example of this situation is if a worker sustains a crushing injury to his or her hand resulting in an amputation of a finger and additional injuries to the hand. In addition to workers' compensation Specific Loss benefits for the loss of the finger, the injured worker may also be entitled to wage loss benefits due to the disability resulting from the additional separate and distinct injuries to the hand. As with all aspects of your workers' compensation claim, it is very important that the legal documents concerning the nature of your work injuries and the extent of your disability be prepared carefully to accurately reflect the different types of compensation benefits that you are entitled to.

2. AM I ENTITLED TO SPECIFIC LOSS BENEFITS FOR SCARS IN ADDITION TO WAGE LOSS BENEFITS?

Yes. As referenced above, "Disfigurement Benefits" are a type of workers' compensation Specific Loss benefit. Disfigurement benefits are payable to injured workers who sustain permanent burns, scarring, discoloration, or other disfigurement of the head and neck only. You are entitled to disfigurement benefits if your disfigurement is a direct result of an acute injury, such as a blow to the head resulting in lacerations that leave permanent scars or other disfigurement. However, you are also entitled to disfigurement benefits if your scarring or other disfigurement is the result of surgical procedures or other medical treatment for a work injury that causes scars, discoloration, or other disfigurement of the head and neck.

3. AM I ENTITLED TO COMPENSATION FOR PARTIAL HEARING LOSS DUE TO LOUD NOISES AT WORK?

Yes. Injured workers who sustain a permanent total or partial loss of hearing as the result of exposure to long term hazardous occupational noise may be entitled to "Hearing Loss benefits," a type of workers' compensation Specific Loss benefit. In addition, injured workers who sustain a permanent partial or total loss of hearing which is not caused by long term exposure to occupational noise but is the result of other work related causes such as acoustic trauma or head injury, may also be entitled to workers' compensation hearing loss benefits. A three (3) year statute of limitation exists for filing a hearing loss claim that begins to run immediately after the last date of the injured worker's exposure to hazardous occupational noise with his or her employer. The failure to file a claim petition within this time period will result in dismissal of the claim.

The employer is permitted to require audiometric testing at its expense from time to time. You have the right to request a copy and an explanation of the results of the testing, which must be provided within thirty (30) days of the date that the results are available.

VI. WORKERS' COMPENSATION DEATH BENEFITS

Where a worker dies as the result of a work injury and within three hundred (300) weeks from the date of the work injury, the injured worker's family members and dependents may be entitled to payment of weekly workers' compensation benefits and burial expenses. The

Pennsylvania Workers' Compensation Act and case law define and enumerate the family members and dependents who are entitled to weekly workers' compensation benefits, the amount and duration of benefits, and the circumstances and facts necessary to support a finding of a covered fatal work injury.

FREQUENTLY ASKED QUESTIONS ABOUT DEATH BENEFITS

1. ARE MY FAMILY MEMBERS AND DEPENDENTS ENTITLED TO COMPENSATION IF I DIE AS A RESULT OF A WORK INJURY?

Yes. As referenced above, a work injury resulting in an injured worker's death is covered if death occurs within three hundred (300) weeks from the date of the injury. The class of dependents that entitled to workers' compensation "Death Benefits" includes the widow, widower, children, parents, and brothers and sisters. Children includes both legitimate and illegitimate children, adopted children and children for whom the injured worker decedent stood as a step parent or otherwise assumed parental responsibilities, and children of the injured worker decedent born after the injured worker decedent's covered fatal work injury.

VII. PROTECTING THE WORKERS' COMPENSATION CLAIM

A favorable outcome in a workers' compensation claim requires careful consideration, planning, and decision-making.

FREQUENTLY ASKED QUESTIONS ABOUT PROTECTING YOUR CLAIM

1. HOW CAN I MAKE SURE THE ATTORNEY I SELECT TO REPRESENT ME ON MY WORKERS' COMPENSATION CLAIM IS A SKILLED WORKERS' COMPENSATION ATTORNEY?

It is very important that the attorney that you choose to represent you in your workers' compensation claim is a skilled and experienced workers' compensation attorney. The Pennsylvania Workers' Compensation Act, the applicable Departmental Rules and Regulations, and the interpretive case law are significant, complex, and subject to frequent change. You can be certain that your employer/insurance company will have attorneys working for them who specialize in workers' compensation defense. You owe it to yourself to obtain representation by a skilled workers' compensation attorney, whose practice is limited to representing claimants for workers' compensation benefits. When speaking with a prospective attorney for the first time with regard to your workers' compensation claim, you should take the time to ask the attorney questions about their education, training and experience. The selection of your workers' compensation attorney may be the most important decision that you make in connection with your workers' compensation claim.

2. IF MY EMPLOYER PAYS WAGE LOSS BENEFITS AFTER ISSUING A TEMPORARY NOTICE OF COMPENSATION PAYABLE, HAS MY CLAIM BEEN ACCEPTED?

No. The Pennsylvania Workers' Compensation Act allows the employer/insurance company to pay compensation benefits to injured workers pursuant to a document known as a Notice of Temporary Compensation Payable ("TNCP"). An employer/insurance company may issue a TNCP without admitting liability for an injured worker's work injuries. If an employer/insurance company

continues to pay an injured worker beyond a ninety (90) day period, or does not otherwise revoke its temporary acceptance of liability by filing a Notice Stopping Temporary Compensation Payable, the TNCP converts to a Notice of Compensation Payable ("NCP"). This is significant, since the NCP provides substantial legal protections and presumptions.

Injured workers are regularly lulled into a false sense of security by the employers'/insurance companies' issuance of the TNCP. When injured workers are compensated for their time off work and their medical bills are paid, it may seem like the employer/insurance company has accepted liability for their workers' compensation claims. The employer/insurance company may revoke the TNCP after the injured worker returns to work by filing a Notice Stopping Temporary Compensation Payable. Years later, when the injured worker needs additional medical treatment or goes off work disabled again due to the original work injury, the injured worker may be precluded from filing a claim for his or her wage loss disability and medical bills based on the three (3) year statute of limitations.

3. IF I AM RECEIVING WORKERS' COMPENSATION BENEFITS CAN I ASSUME THAT MY EMPLOYER HAS ACCEPTED LIABILITY FOR MY WORK INJURIES?

No. It is very important that the official legal documents concerning the nature of your work injury and the extent of your disability are accurate. Employers/insurance companies often fail to prepare and issue any official legal documents at all concerning your claim, despite the employer's/insurance company's legal responsibility to do so. It is also common for employers/insurance companies to prepare and issue official legal documents that do not accurately reflect the nature and duration of your injury and disability.

4. HOW LONG DO I HAVE TO FILE A CLAIM WITH THE WORKERS' COMPENSATION BUREAU?

You have three (3) years from the date of the occurrence of your work injury to "file a claim" with the Bureau of Workers' Compensation for your work injuries. This three (3) year limitation may be extended under very limited circumstances. The longer you wait to file a claim, the harder it will be to establish your claim.

5. HOW LONG MAY I WAIT TO NOTIFY MY EMPLOYER OF MY WORK INJURIES?

You must provide notify your employer that you have sustained a work related injury and the nature of your work related injury within one hundred and twenty (120) days of the occurrence of your work injury. If you fail to provide your employer with timely notice of your injury, you will lose all of your right to benefits for the specific work injury at issue. If you provide notice to your employer of your work injury within twenty one (21) days of the occurrence of your work injury, assuming that all of the other essential elements of your claim are met, you will be entitled to workers' compensation wage loss benefits beginning as of the date of the occurrence of the work injury. If you provide notice to your employer of your work injury after twenty one (21) days from the date of your work injury (but within one hundred and twenty (120) days of the date of the work injury), you will be entitled to workers' compensation wage loss benefits only as of the date in which you provided timely notice. We recommend that you document notice to your employer in a formal and detailed manner to avoid any discrepancies at a later point in time. Notice requires notice to a company officer, your supervisor or a manager that advises them of the occurrence and nature of the work injury. The employer may be charged with notice if they have actual knowledge of your work injury or constructive notice of it.

6. WHAT IMMEDIATE STEPS SHOULD I TAKE IF I HAVE A WORK INJURY?

First, you must provide a detailed, timely notice to your employer of the occurrence and nature of the work injury. Also, while employers are required by law to fill out their own accident/injury report and forward the report to its workers' compensation insurance company, do not rely on your employer's to do so. Seek medical treatment immediately for your injury. Your work injury should be documented in medical records. Give your doctor a detailed history and account of the nature of your work injuries and how they occurred.

7. UNDER WHAT CIRCUMSTANCES WILL MY FAILURE TO FOLLOW THROUGH ON MY LEGAL RESPONSIBILITIES AND OBLIGATIONS RESULT IN THE LOSS OF MY RIGHTS TO WAGE LOSS BENEFITS?

Once you have filed a workers' compensation claim, the employer/insurance company will periodically send you Bureau of Workers' Compensation Forms requesting that you advise the employer/insurance company of any and all wages and any other non-workers' compensation benefits that you may have received after the work injury. This includes self-employment. When you receive these forms, you must accurately complete and sign them and return them to the employer/insurance company in a timely fashion. Failure to properly return the forms within thirty (30) days will allow the employer/insurance company to stop payment of your wage loss benefits until the forms are received by the employer/insurance company in a properly completed manner. Keep a copy for your own records and see that your workers' compensation attorney also receives a copy.

In addition, if you receive a "Notification of Modification or Suspension" document ("Notification") in the mail, failure to properly challenge the Notification may result in forfeiture of your rights.

8. IS MY RELATIONSHIP WITH MY TREATING DOCTOR IMPORTANT IN PROTECTING MY WORKERS' COMPENSATION CLAIM?

Yes, your relationship with your treating doctors is very important. Doctors and other health care providers have significant responsibilities in the workers' compensation system in establishing the nature and cause of your work injuries, the course of medical treatment to be considered reasonable and necessary treatment for your work injuries, and the extent and length of your work injury related disability. The opinions of your doctor and the other health care providers involved in treating you for your work related injuries are critical in this regard. In many cases, they serve as the basis for how your employer/insurance company views and evaluates your workers' compensation claim, and the findings of fact and conclusions reached by a Workers' Compensation Judge in the determination of your claim. Obtain medical documentation for all physical restrictions, limitations or work excuses. Obtain a copy of your restrictions, and provide this to your workers' compensation attorney.

9. CAN MY EMPLOYER FORCE ME TO BE EVALUATED BY ONE OF ITS DOCTORS?

Yes. The employer/insurance company is entitled, generally every six (6) months, to have you examined by a doctor of the employer's/insurance company's choice. These examinations are known as Independent Medical Examinations ("IME"). It is important that you know that doctors that examine and evaluate you for an IME are not providing you with medical treatment or a "second opinion." No doctor/patient relationship is established by an IME in any respect. An IME is utilized by the employer/insurance company to assess the extent of the employer's/insurance

company's potential liability for your work injury. Following an IME, the employer/insurance company will obtain a medical report from the examining IME doctor that addresses various important issues in your workers' compensation claim, such as the following:

- Whether your medical condition was caused by the work accident;
- Whether your medical condition results in any physical limitations and/or restrictions of his or her work activities;
- Whether you are yet physically able to return to work, and if so, in what capacity;
- Whether you have yet reached a full recovery from all of the effects of the work injury;
- Whether the medical treatment that you have received or will be receiving is treatment which is reasonable, necessary, and causally related to the work injury; and
- The prognosis for your medical condition.

You have the right to request that your workers' compensation attorney be permitted to attend the IME with you. However, if the examining doctor objects to the presence of your attorney, the doctor may refuse to conduct the examination. You are also entitled to have your treating doctor present during the IME, provided you make the arrangements yourself.

When attending the IME, it is extremely important for you to conduct yourself in the following manner:

- Be as pleasant and cooperative as possible in dealing with the examining doctor and his or her staff.
- Be completely truthful and straightforward to the doctor and his or her staff, in discussing the history regarding the work injury, and any resulting symptoms, physical limitations, and restrictions.
- Be very careful in explaining how the injury occurred and the symptoms and physical restrictions and limitations that have followed, to avoid any potential discrepancies in the medical records.
- Be aware that the doctor will very likely be watching your physical movements and expressions before, during, and after the formal physical examination.
- Be aware that the doctor will very likely be looking for any inconsistencies he or she can find with regard to your history, symptoms, restrictions, and limitations; and also whether there is any indication at all of intentional exaggeration of complaints of pain and/or other symptoms and restrictions. The doctor's documentation of any such inconsistencies can be very damaging to your workers' compensation claim. The doctor is trained to identify any such behavior and you must therefore remember to be as straightforward as possible in dealing with the doctor.

After the IME, you should advise your workers' compensation attorney of what occurred throughout the examination and what it consisted of so that your attorney can keep a record of this information for you.

10. IS MY RELATIONSHIP WITH MY LABOR UNION IMPORTANT IN PROTECTING MY WORKERS' COMPENSATION CLAIM?

Yes. If the workforce at your place of employment is unionized, that can be of significant advantage to you in the protection of your workers' compensation claim, and of your job. First, with the Labor Union Contract or Collective Bargaining Agreement in place between your Labor Union and your employer, you have a defined and established set of rights and entitlements that workers without an employment contract do not have. This can make a big difference in how you are treated by your employer, the nature and duration of your continued employment with your

employer, and also potentially the amount and duration of workers' compensation benefits that you will receive as the result of your added protections afforded by being a member of a Labor Union. In addition, your Labor Union may have Union Stewards, Business Agents, and other Representatives and Officers to help and assist you in your dealings and concerns with your employer regarding your work injury. The Labor Union may even have Representatives and Officers that are on a "Workers' Compensation Committee" or a "Safety Committee" within the Labor Union, who may be in a great position to assist you and your attorney with work injury issues. If your Labor Union does not have a "Workers' Compensation Committee" to deal specifically with work injury related issues, consider bringing it up at your next Union meeting so that a committee in this regard can be established. Also, please remember that having a Labor Union to help you can be of great importance in the protection of your job and workers' compensation claim. However, having a Union representative on your side does not take the place of you also having an experienced and skilled workers' compensation attorney to aggressively represent, advise, and guide you with regard to your legal rights, entitlements, and obligations under the Pennsylvania Workers' Compensation Act.

11. SHOULD I SIGN ANY DOCUMENTS RELATING TO MY WORK INJURY WITHOUT FIRST REVIEWING THEM WITH MY WORKERS' COMPENSATION ATTORNEY?

No. You should not sign any document regarding your workers' compensation claim without first having **Freeburn & Hamilton** review it to make sure that the document is relevant, and is legally and factually correct. Any document that you sign pertaining to your workers' compensation claim will affect the nature, amount, and duration of benefits to which you may be entitled. Even if a document appears on its face to be factually accurate, signing the document may have significant legal implications that are unfavorable to your workers' compensation claim. Do not sign anything without reviewing it first with Freeburn & Hamilton!

12. WHAT SHOULD I EXPECT TO HAPPEN IF I HAVE TO ATTEND A HEARING BEFORE A WORKERS' COMPENSATION JUDGE?

A hearing takes place after a Petition has been filed and is assigned to a Workers' Compensation Judge. The injured worker, the employer, or the workers' compensation insurance company can file a Petition. The employer and the insurance company are named as the "Defendants" in the Petition proceedings, and the injured worker is named as the "Claimant."

Once a Petition is filed and it is assigned to a Workers' Compensation you will receive a Notice of Assignment to Workers' Compensation Judge form in the mail. The Judge will then mail you a Notice of Hearing form advising you of the date, time, and location of a hearing. At the hearing, the Workers' Compensation Judge will hear evidence, provided it is properly submitted, legally relevant, and legally admissible. An attorney will be present to represent your employer or its insurance company. You are not required to have legal representation at the hearings, but it is strongly advised that you obtain legal representation. Do not expect the Workers' Compensation Judge to assist you in the presentation of your case. There may be more than one (1) hearing held on the Petition. Once the Workers' Compensation Judge closes the evidentiary record, the parties typically submit legal briefs to the Workers' Compensation Judge, asserting and arguing the merits of the case. The Workers' Compensation Judge then issues written Decision to all parties, stating the findings of fact and legal determinations made on the Petition at issue.

VIII. **SETTLING A WORKERS' COMPENSATION CLAIM AND PREPARING FOR THE FUTURE**

Settlement of your workers' compensation claim is a major life decision.

FREQUENTLY ASKED QUESTIONS ABOUT SETTLEMENT

1. IS MY EMPLOYER REQUIRED TO OFFER ME A LUMP SUM SETTLEMENT?

No. Your employer/insurance company is not required to pay you a lump sum settlement, and you cannot force a settlement on them. Likewise, they cannot force a settlement on you.

However, in many cases, it is to the mutual benefit of the employer/insurance company and the injured worker to settle the workers' compensation claim. A settlement requires an initial determination that settlement is appropriate for your circumstances. A determination must be made whether to settle the entire claim or just the income loss portion, and preserving your rights to medical benefits. A determination must be made as to the appropriate amount of the settlement. A strategy must be devised to secure that amount. Numerous legal considerations and options must be taken into account. Failure to properly deal with all of the issues involved in settlement may have devastating, unexpected consequences. Settlement requires the skills of an experienced workers' compensation attorney.

The settlement agreement and its terms are finalized at a hearing before a Workers' Compensation Judge. The judge's role at the hearing is not to protect your rights or to decide whether the settlement is in your best interests. The judge is only there to make sure that there is a record to show that you stated that you understand the terms of the settlement.

2. IF I SETTLE MY CLAIM FOR A LUMP SUM PAYMENT, IS MY EMPLOYER STILL REQUIRED TO PAY FOR MY MEDICAL BILLS?

Maybe. Settlement can be structured in many different ways. It is all a matter of negotiation and a matter of evaluation of what is reasonable given the facts of your workers' compensation claim and the legal issues involved. You need to be aware that the employer/insurance company is usually looking to settle the entire claim as a full and final settlement of all aspects of your workers' compensation claim, so that it does not have to pay you anything after the settlement. You should have a skilled workers' compensation attorney represent you in evaluating your claim, and pursuing your workers' compensation lump sum settlement for future compensation.

3. SHOULD I KEEP MY CLAIM OPEN, AND NOT SETTLE WITH MY EMPLOYER/INSURANCE COMPANY?

It all depends on the very specific facts and legal issues involved in your workers' compensation claim. Don't rush into a settlement that is not in your best interest. Contact **Freeburn & Hamilton** to evaluate your claim and ensure that you are properly compensated in all respects for your work injuries.

4. HOW CAN I BE SURE THAT THE AMOUNT OF MY SETTLEMENT IS APPROPRIATE AND NOT JUST A "QUICK SETTLEMENT?"

There is only one (1) way that you can be sure - have a skilled workers' compensation attorney represent you in fully evaluating your claim, and pursuing and obtaining your workers' compensation lump sum settlement for future compensation.

5. IS MY EMPLOYER REQUIRED TO PROVIDE ME WITH JOB RETRAINING?

No. While some employers/insurance companies do provide injured workers with job retraining and/or placement, they are not legally required to provide such services. However, there are organizations that can help provide you with vocational retraining and/or placement to enable you to get back into the work force. "OVR" is the Pennsylvania Office of Vocational Rehabilitation, which is a State Agency within the Pennsylvania Department of Labor and Industry that helps injured workers with disabilities prepare for, start, and maintain a career if they are unable to return to their previous employment due to their disability. OVR has numerous offices located throughout Pennsylvania with a multitude of professional vocational rehabilitation counselors to assist injured workers in this regard. You should apply to OVR if you have a disability, and your disability causes you substantial problems in preparing for, getting, or maintaining a career.

To obtain assistance in this regard, call the district office responsible for the county in which you live. When you contact OVR, explain to an OVR staff person that you have a disability due to a work related injury and that you want assistance with getting back into the workforce.

IX. LAWSUITS AND OTHER REMEDIES

In addition to your remedies under the Pennsylvania Workers' Compensation Act, there may be additional State and Federal remedies available to you to provide additional compensation to you for disability related to your work injuries.

FREQUENTLY ASKED QUESTIONS ABOUT LAWSUITS AND OTHER REMEDIES

1. IF I AM A POLICE OFFICER, FIREFIGHTER, CORRECTION OFFICER, OR OTHER LAW ENFORCEMENT PERSONNEL EMPLOYED BY THE STATE OR ANY OF ITS COUNTIES OR MUNICIPALITIES, AND I AM INJURED IN THE PERFORMANCE OF MY DUTIES, AM I ENTITLED TO ANY ADDITIONAL RIGHTS AND COMPENSATION IN ADDITION TO MY WORKERS' COMPENSATION BENEFITS?

Yes. The Heart and Lung Act provides that police officers, firefighters, correction officers, and other law enforcement personnel employed by the state or any of its counties or municipalities, who are injured in the performance of their duties, are entitled to receive their full salary during periods of temporary disability due to the injury. Since basic workers' compensation coverage generally provides for payment of only sixty six and two thirds percent (66 2/3%) of injured workers' pre injury salary, the Heart and Lung Act's provision of full salary to the disabled injured workers within these classifications is a major benefit which was intended to attract new police officers and firefighters to work in these dangerous positions. The Heart and Lung Act applies to all work injuries sustained by workers who are within the classifications stated above, and also provides a special presumption that diseases of the heart and lungs are causally related to the injured workers' employment for police officers and firefighters who have served for four (4) consecutive years or longer and have developed such conditions. Heart and Lung Act benefits cannot be terminated without a due process hearing, and since there is an interrelationship between the Pennsylvania Workers' Compensation Act and the Heart and Lung Act, what happens in the Workers' Compensation claim may have an effect on the injured workers' entitlement to Heart and

Lung Act benefits, and vice versa. Accordingly, it is recommended that injured police officers, firefighters, correction officers, and other law enforcement personnel obtain representation from an attorney who is skilled in dealing with both Workers' Compensation and Heart and Lung Act matters.

2. IF I AM AN EMPLOYEE OF A STATE PENAL OR CORRECTIONAL INSTITUTION UNDER THE BUREAU OF CORRECTIONS, OR AN EMPLOYEE OF A STATE MENTAL HOSPITAL OR YOUTH DEVELOPMENT CENTER UNDER THE DEPARTMENT OF PUBLIC WELFARE, AND I AM INJURED IN THE COURSE OF MY EMPLOYMENT BY AN INMATE OR ANY PERSON CONFINED IN SUCH AN INSTITUTION, AM I ENTITLED TO ANY ADDITIONAL RIGHTS AND COMPENSATION IN ADDITION TO MY WORKERS' COMPENSATION BENEFITS?

Yes. Act 534/632 provides that employees of a State penal or correctional institution under the Bureau of Corrections, and employees of a State mental hospital or youth development center under the Department of Public Welfare, who are injured in the course of their employment by an inmate or any person confined in such an institution, are entitled to receive their full salary until they are able to return to work in such department, board, or institution at a salary equal to the salary earned at the time of the work injury. Since basic workers' compensation coverage generally provides for payment of only sixty six and two thirds percent (66 2/3%) of injured workers' pre injury salary, Act 534/632's provision of full salary to the disabled injured workers within these classifications is a major benefit which was intended to attract workers for these important and dangerous positions in State institutions. Act 534/632 benefits cannot be terminated without a due process hearing, and since there is an interrelationship between the Pennsylvania Workers' Compensation Act and Act 534/632, what happens in the Workers' Compensation claim may have an effect on the injured workers' entitlement to Act 534/632 benefits, and vice versa. Accordingly, it is recommended that injured employees of a State penal or correctional institution or State mental hospital or youth development center under the Department of Public Welfare obtain representation from an attorney who is skilled in dealing with both Workers' Compensation and Act 534/632 matters.

3. IF I AM RECEIVING WORKERS' COMPENSATION WAGE LOSS BENEFITS, MAY I ALSO FILE FOR SOCIAL SECURITY DISABILITY BENEFITS?

Yes. If your medical disability, including all disabilities, is severe enough to support a determination that you are disabled from all substantial gainful employment for a period of at least six (6) months, you may be entitled to Social Security Disability benefits from the Social Security Administration. The amount of Social Security Disability benefits to which you may be entitled will depend on the amount of other income you may have, including your workers' compensation wage loss benefits. However, your qualification for and receipt of Social Security Disability benefits will have no adverse effect on your workers' compensation claim, and you should not hesitate to apply at the Social Security Administration field office closest to your home. It is strongly recommended that you have legal representation in this regard. Workers' compensation attorneys regularly have many clients that qualify for both Social Security Disability benefits and workers' compensation benefits, and are therefore familiar with this process. **Freeburn & Hamilton** may be able to assist you in this regard.

4. IS MY EMPLOYER REQUIRED TO COMPLY WITH THE AMERICANS WITH DISABILITIES ACT WITH REGARD TO MY WORK INJURIES?

Yes, if certain requirements are met. The Americans with Disabilities Act ("ADA") aims to eliminate discrimination in the workplace against qualified individuals with disabilities, regardless

of whether the disability was caused by a work injury. The ADA prohibits discrimination by employers, and also imposes additional obligations regarding the manner in which employers treat their workers. The employment protection provisions of the ADA apply to employers with fifteen (15) or more full time workers, and the ADA applies to private employers and government agencies. To be able to seek relief under the ADA, the worker must show that he or she is disabled in that the disability substantially limits one (1) or more of the major life activities (particularly work) of the individual. The worker must also show that he or she is able to do the essential functions of the job with or without a reasonable accommodation, and that the worker has suffered an unfavorable employment decision as the result of discrimination based on the worker's disability. The ADA provides remedies for victims of discrimination in this regard, including reinstatement, back and front pay, compensatory and punitive damages, and payment of attorney's fees.

5. IS MY EMPLOYER REQUIRED TO COMPLY WITH THE FAMILY MEDICAL LEAVE ACT WITH REGARD TO MY WORK INJURIES?

Yes, if certain requirements are met. The Family Medical Leave Act ("FMLA") requires covered employers to provide up to twelve (12) weeks of unpaid, job-protected leave to "eligible" workers for certain family and medical reasons. You are eligible if you have worked for a covered employer for at least one (1) year and for 1,250 hours over the previous twelve (12) months, and if your employer has at least fifty (50) workers within a seventy five (75) mile radius of your work site. At your or your employer's option, certain kinds of paid leave, including workers' compensation benefits may be substituted for unpaid leave. There are various requirements that must be met before a paid leave would be substituted for unpaid leave. For the duration of FMLA leave, the employer must maintain your health coverage under any "group health plan." Upon return from the FMLA leave, you should be restored to your original job or an equivalent job with equivalent pay, benefits, and other employment terms. The use of FMLA leave cannot result in the loss of any employment benefit that accrued before the start of your leave. FMLA also does not supersede any collective bargaining agreement that provides greater family or medical leave rights. The U.S. Department of Labor is authorized to investigate and resolve complaints of violations by the employers. In addition, you may bring a civil action against an employer for employer violations of FMLA.

6. MAY MY EMPLOYER TERMINATE MY EMPLOYMENT, PUNISH ME, OR RETALIATE AGAINST ME FOR PURSUING A WORKERS' COMPENSATION CLAIM?

No. Different rules may apply depending on the existence of an employment contract between a worker and employer, and the specific content of any such employment contract. Generally, an employer may not terminate your employment, punish you, or retaliate against you specifically for filing and pursuing a workers' compensation claim for injuries occurring in your employment. An employer who engages in such conduct may be subject to an unlawful discharge claim and/or other remedial action brought by the injured worker based on such employer conduct.

7. DO I HAVE THE RIGHT TO SUE THIRD PARTIES FOR MY WORK INJURIES?

Yes. Often times, an injury that occurs during the course of employment is the result of some negligence or wrongdoing by a third party. For example, if you are injured in an automobile accident, and a third party who is not your employer or co-employee is solely or partially at fault, you may have a right to claim and recover damages separate from your workers' compensation benefits. There are many examples of how a third party may be responsible for your work injuries and it is important to contact **Freeburn & Hamilton** to discuss your rights.

X. TAXATION OF DISABILITY BENEFITS

When you are faced with a disabling injury, whether temporary or permanent, financial pressures can seem insurmountable. This can be especially difficult if you and your employer are unaware of special tax treatment of disability benefits which may be available.

The Internal Revenue Code excludes from income taxation [Section 104(b)] and FICA taxes [Section 3121(a)(2)] amounts received under workmen's compensation acts as compensation for personal injuries or sickness. Likewise, Pennsylvania [72 P.S. Section 7301(d)] and the Local Income Tax [53 P.S. Section 6913] statutes contain similar exclusions.

These income exclusions apply to more payments than those received under statutes bearing the title of Workmen's Compensation Acts. In fact, any disability benefit, whether it constitutes a wage continuation during periods of temporary disability under the Heart and Lung Act [53 P.S. Section 637] or a disability retirement for permanent conditions, can be excluded from taxation if it meets certain requirements which the IRS uses to determine if the payment is in the nature of workmen's compensation. Please note that special provisions have been established regarding various Social Security taxes. Medicare taxes continue to be assessed against all nonpension disability payments, and FICA taxes are collected for the first six months of continuous disability.

In summary, if pre- or post-retirement disability benefits are statutory, work-related, and not calculated on age, service, or employee contributions, they are excludable from federal taxes. If you believe that your disability benefit may qualify you are advised to seek the assistance of a professional tax consultant.