

Facts for Workers Who May Have a Permanent Disability

Some workers who get hurt on the job do not fully recover. If your treating doctor says you will never recover completely from a work injury, you may be eligible for workers' compensation benefits for your disability and benefits to help you return to work. Your employer may not discriminate against you for requesting workers' compensation benefits, getting injured at work, or having a permanent disability.

- **Permanent disability (PD) benefits.** These are paid if your job-related disability permanently limits the work you can do. The amount paid depends on how disabled you are and the wages you were earning before injury. If you can no longer do your usual job, these benefits may not replace all the income you lose. On the other hand, they are paid even if you can continue working in the same job.
- **Return to work.** Your employer may offer you regular, modified, or alternative work that accommodates your disability. **Regular work** must pay the same as you were earning before injury. **Modified or alternative work** must pay 85% of what you were earning before injury. The work must meet the restrictions in your doctor's report, last at least 12 months, and be within a reasonable commuting distance of where you lived at the time of injury. If your employer does not make this offer, you are eligible for a **supplemental job displacement benefit (voucher)** to help pay for educational retraining or skill enhancement at a state-approved or state-accredited school. The amount of the voucher depends on how disabled you are.
- **Workers' compensation anti-discrimination law.** California workers' compensation law (Labor Code section 132a) makes it illegal for your employer to discriminate against you because of your injury. This means your employer may not fire, threaten to fire, demote, or otherwise treat you differently from other employees solely because you requested workers' compensation benefits or got injured at work. To defend against a claim of discrimination, your employer must prove there was a valid business reason for the action taken against you.
- **Disability rights.** The California Fair Employment and Housing Act (FEHA) requires employers with five or more employees to provide a reasonable accommodation to an injured worker. FEHA also requires the employer to engage in a "timely, good faith, interactive process" with the worker to find a reasonable accommodation. This means the employer must communicate openly with you and share important information about possible accommodations, and the interaction must be genuine.

To request benefits or if you have a problem, contact your employer or your employer's workers compensation insurer. If this does not work, contact the California Division of Workers' Compensation, consult an applicants' attorney, contact your union (if you have one), or visit a legal services provider (legal aid). If you feel your employer has discriminated against you because you are disabled, you can also contact the California Department of Fair Employment and Housing or an employment law attorney.

This factsheet was produced by Worksafe Law Center in July 2009 and is adapted from *Workers' Compensation in California: A Guidebook for Injured Workers, 3rd Edition, November 2006*, and an upcoming booklet called, *Helping Injured Employees Return to Work: Practical Guidance Under Workers' Compensation and Disability Rights Laws in California*, produced for the California Commission on Health and Safety and Workers' Compensation by the Institute for Research on Labor and Employment, University of California at Berkeley. All or portions of this factsheet may be reproduced for educational purposes without permission. Please credit Worksafe Law Center, IRLE, and the Commission. To contact Worksafe, go to www.worksafe.org or call 510.302.1027.