
ANSWERING YOUR QUESTIONS ABOUT PERSONAL INJURY

A public service of this law firm and the State Bar of Wisconsin

I've been injured, now what?

If someone else is more at fault for your injury than you are, you may make a claim against that person or business and their insurance company, if any. The type of accident and the cause of the accident may affect whether you are entitled to compensation, as in the following examples:

- *Motor vehicle accidents:* Fault or “negligence” is determined by traffic regulations and which driver's carelessness contributed most to the accident and injuries, including your own conduct such as failure to use seatbelts.
- *Commercial accidents* (such as in stores): Injuries are compensable only if caused by an unsafe condition that the owner should have known of, appreciated, and corrected before the accident.
- *Home/farm/apartment/recreation injuries:* Renters, owners, or residents may be found liable for injuries they cause by negligent maintenance, oversight, or attacks by pets; however, property owners who permit others to use their land without charge for recreational purposes may be completely immune to any claim for unsafe conditions, however flagrant.
- *Government employees and premises:* Injuries caused by negligent public employees or unsafe conditions will be compensated only in limited circumstances and are subject to stringent notice and claim requirements. State, federal, and local governments are given broad latitude to determine most matters involving public safety, including the design and maintenance of roads, parks, and facilities.
- *Workplace injuries:* Injuries at work generally are covered by worker's compensation benefits which compensate for medical expenses, lost wages, and permanent impairments, without regard to fault by anyone. If the accident was caused by someone *other than the employer or a co-worker*, a fault-based claim can be made that could include damages for pain and suffering in addition to the worker's compensation benefits.
- *Intentional injuries:* Injuries inflicted on purpose by any means are not usually covered by the guilty party's liability insurance, although the responsible party may be personally liable for such harm.
- *Other accidents:* More complicated rules determine if injuries caused by dangerous products, the accumulation of ice or snow, faulty professional services, or public utilities will be compensated. In addition, users of firearms, dog owners, and operators of restaurants, hotels, and public transportation may be liable for injuries they cause because the law imposes special responsibility for these hazards which your attorney can explain in more detail.

This information, which is based on Wisconsin law, is issued to inform and not to advise. No person should ever apply or interpret any law without the aid of a trained expert who knows the facts, because the facts may change the application of the law.

Which insurance policies will cover my costs?

Most automobile, homeowners and commercial liability policies contain “medical payments” coverage for medical expenses incurred after an accident without regard to fault. This coverage in auto policies applies to the insured family members and vehicle passengers, while homeowners and commercial policies cover only “others” or visitors to the premises.

Health, worker's compensation, disability insurance carriers or HMOs usually will pay benefits arising from accidental injuries. However, if your claim against another person succeeds, then the insurance provider will probably require you to repay these benefits to them.

If the accidental injury is primarily your own fault, then only health insurance (such as through your employer), worker's compensation, or medical payments coverage may apply.

Injuries caused by uninsured drivers are compensated by your own “uninsured motorist” coverage (if you have it) applying the same general rules as insured drivers.

Should I hire a lawyer?

If you know for certain that your injury is a minor one that will not result in time lost from work or school or substantial medical care, then you may want to settle it yourself in small claims court. (In Wisconsin, this court handles claims up to \$5,000.) Of course,

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insurance claims adjusters generally try to settle claims inexpensively and on terms favorable to the insurer. **If you have been seriously injured or are unsure as to the outcome of your injury, then an experienced personal injury attorney should always be consulted before you give any statements or sign papers of any kind and as soon after the injury as possible.** You should be able to discuss your claim and the potential fee arrangements with your attorney before you commit to legal costs.

Personal injury attorneys usually handle claims on a “contingent” or percentage basis depending on the type, difficulty, and expense of the case. Contingent fees can range from 20 percent for worker’s compensation claims to as much as 40 percent for difficult or complex cases. Contingent fee agreements must be in writing and include provisions for out-of-pocket expenses, which typically are paid by the attorney but paid back from any recovery, in addition to the fee for the attorney’s services.

How long do I have to decide?

The law requires you to settle your claim, start a lawsuit, or give special notice within limited times after the injury. The time you have to take action depends on the person or entity that caused your accidental injury. Some Wisconsin statutes of limitation and notice requirements illustrate the complexity and variety of these rules:

- Injury generally – 3 years
- Claims against city/county/school employee – 120 days
- Claims against state employed physicians – 180 days
- Claims under a fire insurance policy – 1 year
- Worker’s compensation claim – 2 years notice to employer, 12 years to file claim.

If you have any doubt about the statute of limitations or notice required you should consult an attorney. *Other states may have shorter or more stringent limitations.*

What is my claim worth?

A claim is valued and usually settled based upon an estimate of what a jury would likely regard as fair and reasonable compensation given the severity of the injury and the effects of the accident on your life, as well as the probability that a recovery against the wrongdoer is warranted. In addition to medical expense and wage loss, you are entitled to money damages for “personal injuries,” including pain, suffering, and loss of enjoyment of life. Your attorney may point out additional damages authorized in special cases such as dog bites or flagrant misconduct.

Severe injuries requiring substantial medical treatment, extended absences from work, and permanent physical or mental impairments may command substantial compensation. Juries tend to believe that injuries that cannot be seen or demonstrated objectively are susceptible to exaggeration by the party seeking money damages, and insurance claim personnel tend to appreciate that fact.

When it comes time to settle a claim, both sides should have a clear “before and after” picture of the injuries and how they have affected the victim’s life. The “difference” is the value of the claim. For example, a previously healthy, productive, young worker injured severely by an obviously culpable defendant will demand substantial compensation, especially where the victim has undergone substantial medical care, extended loss of earnings, and is facing a future of impaired earning capacity, disfigurement, pain, and suffering. On the other hand, the claim of an older person injured in questionable circumstances resulting in complaints that can be established only by the word of the claimant may be substantially discounted both by a jury and a claims adjuster.

If the injured person is found partially at fault for the accident causing the injury, then the amount of damages will be proportionately reduced; likewise, if there is a substantial chance that the claim will not succeed for any reason, then any pretrial settlement will be reduced in most instances.

How and when will my claim be settled?

If the person responsible for your injury has insurance, an insurance adjuster will gather and try to verify the necessary medical treatment records, medical expense, and wage loss information and what permanent impairments have been caused by the accident. If the insurance company makes an offer that you (and your attorney) find acceptable, then the claim process is over. If no acceptable offer is made, then you may file a lawsuit. During the early months after a lawsuit has been filed, both sides can conduct depositions and other “discovery” to obtain more detailed and exacting proof about the nature of the claim.

As the trial date approaches, both the claimant and the insurance company usually take a closer look at the elements of the claim and available evidence to support it, and may try to settle the matter by informal discussion, mediation or pretrial conferences with the judge. Although about 95 percent of injury claims settle before trial, one cannot know in advance which claims will require a trial before a judge or jury for resolution. Once a claim is put in suit, it typically takes six to 18 months to resolve.

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