

### What if I have problems after I settle my claim?

Most insurance companies will try to “clinch” or close out your claim when they offer a settlement. This means you can never reopen your claim and cannot get any more medical treatment paid by the carrier. Other settlements can be reached that allow you to reopen a claim for at least a two (2) year period after settlement if your condition changes. Whether you should “clinch” or leave the case open for two (2) years is an important decision that should not be made without a complete evaluation of how any future medical expenses will be handled. Medicare and Medicaid have the right to question future medical expenses that result from your work injury.

### How long do I have to file a Workers’ Compensation claim?

As soon as possible, you should file Form 18 (Notice of Accident of Injury) with the Industrial Commission (IC) and your employer informing them that you wish to make a claim. While NC law requires this Form 18 to be filed within thirty (30) days, an absolute limit of two (2) years may be applicable to your claim depending on the facts. After your claim is settled, time limits also exist for reopening the case. This form can be obtained by calling our office at 828-252-2852 or the IC at 800-668-8349 or 919-807-2501 or download from their website at [www.ic.nc.gov](http://www.ic.nc.gov).

### Do I need a lawyer?

To make sure you have all the necessary facts and understanding of NC law to make intelligent decisions on how to handle your WC case, you should consult with a lawyer who is familiar and regularly handles WC cases. David Gantt is both experienced and knowledgeable in all areas of Workers’ Compensation, Social Security Disability and other injury law matters. He can help you understand all of the elements of a WC settlement that may reduce your compensation from other sources, thereby decreasing your bottom line and the net benefits you may otherwise be entitled to receive.

### How do I pay my lawyer?

All charges for legal services must be approved by the Industrial Commission (IC). Generally, lawyers charge a contingency fee of 25% of your settlement award for their services on WC cases. This fee is payable only if (a) your claim is successful, and (b) the IC approves the fee. Most lawyers also charge for medical records received from medical providers, court costs, charges for medical opinions, and other expenses incurred in handling your claim. These costs are usually payable in addition to IC approved attorneys fees and are charged regardless of whether your claim is successful or not.

**DAVID GANTT  
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The most important things you need to know when you have been injured on the job from one of Asheville’s most experienced injury and disability lawyers.

## Workers’ Compensation Information

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For more than 30 years, the David Gantt Law Office has represented people suffering from accident injuries and disabilities throughout Western North Carolina. Our firm primarily helps people seek and acquire Workers’ Compensation Benefits, Social Security Disability Benefits, and settlements in other personal injury matters.

Every injury claim that we handle is undertaken on a contingency basis. This means that our fee is recoverable only if your claim is successful. Since your initial consultation is free, there is no risk in seeking the advice of a qualified and experienced lawyer. David is a Board Certified Specialist in Workers’ Compensation Law and will be happy to meet with you at his office. Call for your appointment today and learn about your legal right to benefits under the Industrial Commission rules and North Carolina law.

**DAVID GANTT LAW OFFICE**

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## What is Workers' Compensation?

Workers' Compensation (WC) is an administrative system set up by the NC General Assembly to compensate workers who get injured by an accident on the job or gradually develop health problems over time that are caused by their employment. The system generally provides the worker with compensation even if the worker was partially or totally at fault. The North Carolina Industrial Commission (IC) is the court that handles WC cases.

## What injuries are covered?

The IC requires proof of the relationship of your injury to your work. The proof comes from witnesses to your accident, notice to your employers, the opinion of your treating doctor, the length of time it took for the health condition to develop, the date you learned of the condition and the relationship of your condition to your work and specific job duties. You should be advised of the legal requirements of the IC before making statements to the insurance company about your claim. For any type of injury, whether by accident or occupational disease, you should file a Form 18 (Notice of Injury) with the IC and your employer as soon as possible. The form is available from the IC website, your employer, or our office.

## Are pre-existing conditions made worse by my work covered by WC?

A pre-existing medical condition (whether congenital or by accident) may be covered by WC if your job duties aggravate, accelerate, or trigger your condition. Recent cases have changed the legal standards necessary to link your work accident or condition to the ailment that now keeps you from doing your job. Aggravation of pre-existing injury cases are almost completely controlled by your treating doctor's opinion about the timing and linkage of your work activities to the increased medical problems you have developed. Don't assume your doctors will automatically understand or recognize the connection. In determining whether your pre-existing injury and current work status is compensable, the IC takes into account how your injury or condition affects your ability to work, when and where the pre-existing condition occurred, and whether the new injury was a natural consequence of the original injury or condition. An experienced lawyer can advise you whether your current problems are compensable.

## What benefits can I receive under Workers' Compensation?

### Medical Treatment, Prescriptions & Supplies

Your employer is responsible for all necessary medical treatment and resulting expenses to cure you or give relief from your injury. Necessary medical treatment can include prescriptions, medical supplies, physical therapy, TENS units, crutches, braces, home care, and any other expense that is related to your work injury. These expenses are usually paid directly to the health provider and should continue until you settle your



claim or are released from active medical care. Generally, your employer has the right to choose and

direct your medical care as long as they pay appropriate WC damages to you and your health care providers. If your employer will not authorize use of your primary care physician, you can use health insurance to see that provider anytime. Consistent medical care is reasonable and important. If you are forced to see a doctor you do not care for, use your health insurance or local health department to seek alternative treatment while you go to the employer's choice of physicians. A rehabilitation nurse may be assigned to your case to direct and assist you with medical treatment. The rehabilitation nurse does NOT have the right to be in the room with you when you are examined by your doctor.

### Lost Wages

In NC, employers are required to pay you 66% of your gross (before taxes) wage. These payments do not start until you have missed (with a doctor note) at least one (1) continuous week of work. Once you have missed a full month of work, the employer must go back and pay for the first week. This compensation is called temporary total disability (TTD) payments. TTD payments will continue up to a maximum of five hundred (500) weeks from the date of your disability until:

- You are able to return to work OR
- You agree to a termination of TTD payments OR
- The IC approves a "cut off" of benefits OR
- The IC grants an extension of TTD benefits.

Under NO circumstances can your TTD payments be terminated without an ORDER by the IC.

### Permanent Partial Disability

When a doctor releases you from care, a permanent disability rating may be assigned to your injured body part indicating that full healing will not reach 100%. Whether you can return to work depends on the severity of your injury and how that injury affects your ability to handle the physical demands of your work. If you are able to return to making the same wages as before your work injury, this rating may be your only compensation.

Your disability rating is only one (1) factor the IC and NC law will consider in determining what damages you are entitled to receive due to your work injury. NC law permits you to select the most favorable method of compensation for the injuries and loss of earnings capacity you have sustained.

### Permanent Total Disability

Payments for workers who are permanently disabled are generally limited to five hundred (500) weeks from the date the disability started. A special extended compensation period beyond the presumptive five hundred (500) weeks is possible but requires a special IC order after evidence of continued wage loss is presented and accepted. If the treating doctor determines that your restrictions disable you from work, you should apply for Social Security Disability (SSD) as well as any other private disability insurance you might have. Since SSD applications can take up to two (2) years to be approved, you should consider applying as early as possible. Since both SSD and private disability payments are often offset or deducted by the amount of WC benefits, it is important that we consult and plan for maximizing benefits you receive.

### Total Partial Disability

If you return to work in a job paying significantly less than your pre-injury wage, you may be entitled to a 66% of the wage differential for up to five hundred (500) weeks. Since NC law is based on actual earning capacity, a loss of ability to make money might be compensable. Claims based on lower earning capacity are difficult to prove and quantify. Most successful claims under this theory of WC law require testimony from experts in the fields of vocational analysis and labor markets. We invest in relationships with these types of experts to benefit our clients.

### Other

Work-related depression and other mental impairments may be compensable under WC. Our appellate courts are regularly expanding consideration of mental and physical ailments that result from your employment and/or inability to work after a physical injury. If you believe your work injury caused or deepened the actual injury, you should fully discuss your thoughts with a mental health care counselor. The IC is increasingly aware of and open to the concept that mental ailments can be as significant as physical ones.

## Can my employer fire me because I filed or received WC?

No. The Retaliatory Employment Discrimination Act (REDA) specifically prevents employers from firing you because you filed a WC claim against them. REDA protects you from firing, demotion, punishment, or other retaliatory action the employer may try to take against you. You may be able to sue for monetary damages for a REDA violation. REDA also covers co-workers who testify in WC hearings on behalf of an injured worker. For guidance in filing a REDA claim, contact our office or the NC Department of Labor at 1-800-625-2267.

Federal discrimination laws also protect injured workers from firings or demotions. If you feel your firing is a discriminatory action based on your disability, you should contact the EEOC at 1-800-669-4000.