FOR ANSWERS TO QUESTIONS:

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<td>Information Specialists: (919) 807-2501</td>
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<td>Filing, Case Status, and Hearings</td>
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<td>(919) 807-2586</td>
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<td>Accounts and Invoices</td>
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PLEASE NOTE:

This bulletin is designed to give general information only. **It is not a legal reference.** Further information may be obtained by writing a letter to the Office of the Executive Secretary or to the Workers’ Compensation Information Specialists of the North Carolina Industrial Commission. When writing or calling the Commission about a specific case, always give the name of the injured employee, the Commission’s file number for the claim or the employee’s Social Security Number, and, if available, the name of the employer and date of injury.

You may also consult with an attorney of your choice, which may be at your expense. If you need assistance locating an attorney in your community who is familiar with workers’ compensation law, you may contact the North Carolina Bar Association’s Lawyer Referral Service at [http://www.ncbar.org/public-resources/lawyer-referral-service/](http://www.ncbar.org/public-resources/lawyer-referral-service/) or at (800) 662-7660 and (919) 677-8574. The Lawyer Referral Service will provide the name of an attorney willing to discuss your question for a small fee. Be sure to mention workers’ compensation when requesting a referral.

**Bulletins and Forms**


**Electronic Filing**

All documents filed with the Commission in workers’ compensation cases shall be submitted electronically. Any document filed with the Commission which requires contemporaneous payment of a processing fee pursuant to Rule 11 NCAC 23E .0203 shall not be deemed filed until the fee has been paid in full. The electronic filing requirements do not apply to claimants, medical providers, or non-insured employers without legal representation. Claimants, medical providers, and non-insured employers without legal representation may file documents with the Commission via the Electronic Document Filing Portal, electronic mail, facsimile, U.S. Mail, private courier service, or hand delivery. The Rule governing Electronic Filings in its entirety may be found in 11 NCAC 23A .0108, which is available at [http://www.ic.nc.gov/23A0108AdminCode.pdf](http://www.ic.nc.gov/23A0108AdminCode.pdf).
EMPLOYERS’ OBLIGATION TO OBTAIN AND MAINTAIN COVERAGE

Businesses covered by the North Carolina Workers’ Compensation Act, Chapter 97 of the North Carolina General Statutes, are required by law to obtain insurance or qualify as self-insured to compensate injured workers. In general, all businesses employing three or more employees on a regular basis are covered by the Act. Certain groups are exempt from the provisions of the Act, including, but not limited to agricultural employments with fewer than ten regular employees, certain sawmill and logging operators, and specified domestic employees. Businesses with any employee whose work takes place in the presence of radiation are required to have coverage.

Corporate officers are counted in determining whether the corporation has three or more employees. However, corporate officers may specifically exclude themselves from coverage under a workers’ compensation policy. Corporate officers of certain non-profit corporations that do not receive any compensation for their work are not covered under the Act, but they do count towards the total number of employees. Sole proprietors, partners, and members of limited liability companies are not automatically counted as employees, but they may elect to include coverage for themselves under their workers’ compensation policy. Principal contractors must obtain a certificate of coverage from their subcontractors in order to avoid liability for injuries suffered by a subcontractor’s employees.

How to Obtain Workers’ Compensation Insurance

If you are subject to the Act, you are required to carry workers’ compensation insurance. To obtain workers’ compensation insurance, contact your insurance agent about your coverage needs and the types of coverage available to you.

Types of Workers’ Compensation Coverage

There are four types of workers’ compensation coverage:

1. Conventional & Open Market. An insurance agent can write coverage solely for your business.

2. Assigned Risk Market. If you do not have a sufficient history or have been unable to obtain insurance in the open market due to risk, you can call the North Carolina Rate Bureau, (919) 582-1056, and ask to speak with an insurance agent.

3. Self-Insured Fund. A Self-Insured Fund is a “blanket coverage” of workers’ compensation insurance in which you pay into a large fund that provides the coverage for your business and all other contributors who pay into that fund. Your contribution to the fund is based on your number of employees, your payroll, and the rate assigned to you by the North Carolina Rate Bureau.

   EXAMPLE: You are a General Contractor who is subject to the Act. A Builders Association offers a Self-Insured Fund program. You become a member of the Builders Association and thus pay into their fund for coverage for your business.

4. Self-Insured. To become Self-Insured, you must go to the Department of Insurance and post bond showing that you have the financial means to provide coverage for your employees.

   NOTE: There is a difference between being Self-Insured and being part of a Self-Insured Fund. Many people mistakenly think they are Self-Insured, but actually have coverage through a Self-Insured Fund.
How Your Workers’ Compensation Insurance Premiums Are Set

The North Carolina Rate Bureau, (919) 582-1056, sets rates for specific types of employment, and bases premiums on each $100.00 of payroll. Policies are written annually, and premiums may increase if there is an injury and may decrease if there is not one. Premiums also increase or decrease based upon the number of employees and payroll. (In a Self-Insured Fund, if there is an injury of an employee of one of the other contributors to the fund, their contribution to the fund increases, but the other members’ contributions do not increase unless they have an injury.)

INJURIES COVERED

Employees are entitled to benefits if, while carrying out activities for the benefit of their employer, they suffer an “injury by accident,” a “specific traumatic incident,” or an “occupational disease.” An “accident” is an interruption of the regular work routine and the introduction of unusual circumstances, such as a slip, trip, or fall likely to result in unexpected consequences. A “specific traumatic incident” may include injuries that occur during normal work activities. The employee need not show an instantaneous occurrence, an external cause, or unusual conditions. Injuries that occur gradually over long periods of time are not specific traumatic incidents. All injuries must arise out of, and be in the course and scope of, the covered employment to be compensable.

Businesses complying with the Act and their employees may not be sued in the court system by employees for work-related injuries, except for intentional assaults and conditions that are found to be so grossly unsafe as to make injury substantially certain.

OCCUPATIONAL DISEASE

Generally, an employee is entitled to benefits for disability due to a condition to which the employment significantly contributed, or if the employment was a significant factor in causing the disease’s development, and if the employment exposed the worker to a greater risk of contracting the disease than the public generally. Where an employee is exposed to the same injurious agent at the place of business of more than one employer, the claim should be filed with the employer on whose premises he or she was last injuriously exposed.

GIVING NOTICE TO EMPLOYER AND FILING CLAIMS

To obtain benefits, an employee or the employee’s representative must give the employer written notice of the accident within thirty days of the accident, or in instances of occupational disease (excepting asbestosis, silicosis, or lead poisoning), within thirty days of being advised by competent medical authority that the employee has the occupational disease. NOTICE should be given by providing completed copies of the Commission’s Form 18 (or 18B for lung disease claims), which must include a statement of the injury, to the Commission and the employer or its insurance carrier. SUBJECT TO CERTAIN EXCEPTIONS, AN EMPLOYEE LOSES THE RIGHT TO CLAIM COMPENSATION UNLESS A CLAIM IS FILED WITH THE COMMISSION WITHIN TWO YEARS AFTER THE ACCIDENT, OR IN CASES OF AN OCCUPATIONAL DISEASE, WITHIN TWO YEARS AFTER DEATH, DISABILITY, OR DISABILITY AND BEING ADVISED BY COMPETENT MEDICAL AUTHORITY THAT THE EMPLOYEE HAS AN OCCUPATIONALLY RELATED DISEASE, whichever occurs last. Employees using informal statements will be asked to complete forms requiring information necessary to process the case. Claims Administration can be reached at (919) 807-2501.
EMPLOYERS’ OBLIGATION TO RECORD AND REPORT INJURIES

All work-related injuries requiring medical attention (other than first aid at the work place) should be reported by the employer to its insurance company or administrator, and to the Commission if the injury results in more than $2,000.00 in medical expenses or more than one day’s lost time from work. A COPY OF A COMPLETED FORM 19, WITH “IMPORTANT INFORMATION FOR EMPLOYEE” ON THE BACK, MUST BE FURNISHED TO THE EMPLOYEE OR HIS OR HER SURVIVORS. In addition, the employer is required to provide a Form 18 for use by the employee with the copy of the Form 19.

INDUSTRIAL COMMISSION FORMS

All Industrial Commission forms can be found online and downloaded free of charge at http://www.ic.nc.gov/forms.html#claims. Copies of forms may also be requested by contacting an Information Specialist at (800) 688-8349 or infospec@ic.nc.gov.
BENEFITS

Wage Replacement and Cash Benefits

Temporary Total Disability (TTD): If the employee remains unable to earn wages after the first seven days of disability, the employee may be entitled to weekly benefits equal to two-thirds of his or her average weekly wage up to the maximum compensation rate for a period not to exceed 500 weeks from the date of disability, unless the employee qualifies for extended compensation. After disability has continued for more than twenty-one days, the employee is entitled to receive compensation for the first seven days of disability. The days counted do not have to be consecutive. Weekend days, holidays, and any workday in which the injured employee does not earn a full day’s wages because of the injury are counted as a day of disability, even though the employee may earn some wages.

Temporary Partial Disability (TPD): If upon obtaining post-injury employment, the employee is unable to earn wages as great as those earned pre-injury, the employee is entitled to compensation equal to two-thirds of the difference between the post-injury and pre-injury average weekly wages, so long as the amount does not exceed the statutory maximum weekly benefit. Temporary partial disability benefits may not continue beyond 500 weeks, and any number of weeks wherein temporary total disability benefits were paid will be deducted from the 500-week maximum.

Permanent Partial Disability (PPD): If, at the end of the healing period, there is a permanent impairment to one of the member parts of the body listed below, the employee may receive a set period of benefits without regard to his or her ability to earn wages. Total loss of use of the part entitles the employee to two-thirds of his or her average weekly wage, times the number of weeks shown following the body part below. Benefits for less than total loss are figured on a percentage basis. For example, a twenty-percent permanent impairment rating of forty-five weeks’ compensation is nine weeks. Alternatively, in cases where the employee has a permanent impairment to one of the parts of the body listed below and is unable to earn wages as great as before the injury, the employee may choose the greater benefit of (a) benefits for a set benefit based on the permanent impairment or (b) benefits for two-thirds of the wage difference for a period of time, not to exceed 500 weeks from the date of injury.

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<td>Thumb</td>
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<tr>
<td>First or index finger</td>
<td>45</td>
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<tr>
<td>Second or middle finger</td>
<td>40</td>
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<tr>
<td>Third or ring finger</td>
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<td>Fourth or little finger</td>
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<td>Great toe</td>
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<td>Hearing (both ears)</td>
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<tr>
<td>Back</td>
<td>300</td>
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</tbody>
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The percentage of disability is determined based on physicians’ ratings of the percentage of physical permanent impairment. If there is a dispute between physicians regarding impairment ratings, the Commission will determine the percentage of disability. If the employee is dissatisfied with the treating physician’s rating, he or she may obtain the “second opinion” of another doctor limited solely to the percentage of the impairment rating. The employee, upon approval by the Commission, is entitled to a single second opinion rating by a doctor of his or her choice at the employer’s expense. To obtain the Commission’s Rating Guide, visit [http://www.ic.nc.gov/ncic/pages/ratinggd.htm](http://www.ic.nc.gov/ncic/pages/ratinggd.htm). If there is a disputed issue, the employee may file a Form 33 to request a hearing. This form is available at [http://www.ic.nc.gov/forms/form33.pdf](http://www.ic.nc.gov/forms/form33.pdf).
Total and Permanent Disability: The following constitutes total and permanent disability, thus entitling the worker to weekly benefits and medical compensation during his or her lifetime: the loss of both hands, both arms, both feet, both legs, both eyes, or any two thereof; spinal injury involving severe paralysis of both arms, both legs, or the trunk; severe brain or head injury; or certain severe burns.

Disfigurement and Damage to Other Organs: If the injury leaves facial or head scars that seriously disfigure the person, or causes the loss or permanent injury to an important organ of the body, the employee may be awarded additional compensation not to exceed $20,000.00. The maximum compensation payable for serious bodily disfigurement is $10,000.00. No compensation is allowed for scars where the employee is paid for loss or partial loss of use of the same member part of the body. The employee is also entitled to payment for disfigurement due to the loss or crowning of permanent teeth.

Figuring the Compensation Rate: The weekly rate of compensation cannot be less than $30.00 or more than $992.00 for injuries occurring after January 1, 2018. The maximum compensation rate is adjusted annually. The average weekly wage is usually computed by averaging all wages earned by the employee in the employment in which the employee was injured (including overtime, paid holidays, special allowance for board, lodging, etc.) during the fifty-two weeks prior to the injury. If the employee has lost more than seven consecutive calendar days at one or more times, these days are excluded from the calculation. If the employee has worked only a short time in the employment in which he or she is injured, or if for other reasons this formula does not fairly reflect earnings, the Commission will compute a fair average weekly wage for the employee as provided by the Act. If the employee is under eighteen years of age, a different rate may apply (see “Minors and Incompetents” below). The compensation rate remains the same over the duration of the claim. There are no cost of living increases.

Medical Compensation

Employers must provide, and injured employees must accept, all reasonable medical, surgical, hospital, nursing, and rehabilitative services, including, but not limited to, attendant care services and vocational rehabilitation prescribed by a health care provider and authorized by the employer or by the Commission. The costs of medical compensation are in addition to the disability benefits discussed in the preceding section, and do not offset or reduce them. The employer or its insurance carrier may select the treating physician and other providers of medical compensation, subject to orders of the Commission. If the employee is dissatisfied with the services rendered by providers selected by the employer, the employee may request that the Commission order a change of treatment or approve treatment by providers of employee’s selection.* Such requests must show that the change is reasonably necessary to affect a cure, provide relief, or lessen the period of disability, and be submitted with any medical opinions or records that support the request. A copy of the request must be simultaneously sent to the employer or its insurance company. If an employee fails to cooperate with a provider selected by the employer after being ordered to do so by the Commission, compensation may be suspended while such refusal continues.

The right to medical compensation ends two years after the last payment of medical or indemnity compensation unless, prior to the expiration of this period, an employee files a Form 18M demonstrating a substantial likelihood of a need for future medical treatment, and the Form 18M is thereafter approved by the Commission.

Rules governing rehabilitative services in workers’ compensation cases have been adopted by the Industrial Commission. For more information, please visit http://www.ic.nc.gov/faqs.html#nursingfaq.

*Requests for Commission approval must be in writing and should be directed to the Executive Secretary’s Office at medicalmotions@ic.nc.gov or, if the party is unrepresented, it may be filed via facsimile, private courier service, hand delivery, or U.S. Mail addressed to the Executive Secretary’s Office at 1236 Mail Service Center, Raleigh, NC 27699-1236.
Communication with Medical Providers

When an employer is paying for the medical treatment of an employee due to a compensable injury or occupational disease, the employer is entitled to relevant medical records without the express authorization of the employee. Relevant medical records include those related to the evaluation, diagnosis, or treatment of the injury or disease for which the employee is seeking compensation. The information requested and provided must be related to the injury or disease or must be related to the employee’s ability to return to work.

When an employer is not paying medical compensation, it must provide the employee with contemporaneous written notification of its request to the medical provider. Upon the employee’s request, the employer must also give any records it receives to the employee within thirty days.

Other methods of communications with medical providers, including written and oral communications, are authorized under certain conditions. Employers or insurance carriers may submit additional information to medical providers under certain conditions after allowing the injured worker a chance to object and request a protective order.

Death Benefits

Death benefits are payable when an employee dies due to an accident or occupational disease if the death occurs within six years thereafter or within two years of the final determination of disability, whichever is later. THE CLAIM MUST BE FILED WITHIN TWO YEARS OF THE DATE OF DEATH IN THE NAME OF THE DEPENDENTS OR NEXT OF KIN OF THE DECEDED EMPLOYEE. IT SHOULD NOT BE FILED FOR THE ESTATE BY THE EXECUTOR OR OTHER PERSONAL REPRESENTATIVE OF THE DECEASED. Death is compensated by payment of two-thirds of the decedent employee’s average weekly wage, or the maximum compensation rate, for a period of 500 weeks from the date of death; $10,000.00 for actual funeral expenses, payable to the person or firm actually entitled to it; and, any medical expenses incurred due to the mortal injury or disease. A minor child or disabled spouse may, under certain circumstances, receive more than 500 weeks of benefits.

Minors and Incompetents

An employee under the age of eighteen is entitled to receive the same benefits as other employees if injured. For the purposes of calculating compensation for a minor’s permanent disability, death, or temporary total disability for a period exceeding fifty-two weeks, the minor’s average weekly wage shall be considered to be the same paid to adult employees employed by the same employer at the time of the accident in a similar or like class of work to which the injured minor employee would probably have been promoted to if not injured.

No time limitation under the Workers’ Compensation Act runs against a minor or incompetent until a guardian or trustee has been appointed to represent the minor’s interest or until the minor reaches legal age. The Commission may appoint a guardian ad litem for the purpose of pursuing the claim on behalf of the minor in litigation before the Commission. However, a guardian ad litem may not receive cash compensation on behalf of a minor or incompetent. Compensation may be received by a natural guardian (a parent with whom the child lives), a general guardian, or guardian of the estate of a minor or incompetent appointed by the Clerk of Superior Court of the county in which the employee resides. In certain circumstances, a minor employee may sign agreements and receipts for payments of compensation although the Commission may require the signature of a parent or legal guardian.
DENIAL OF A CLAIM

In a case where no compensation has been initiated by the employer to the employee, an employee who submits a written claim via a Form 18 is entitled to a detailed statement from the employer or insurance carrier of grounds for denying the claim within fourteen days of receipt, unless time is extended by the Commission. An employee desiring a hearing on a claim before the Commission should make the request on a Form 33. A statement making a claim or requesting a hearing must be received by the Commission within two years of the date of injury to preserve the employee’s right to pursue the claim. If the claim or request for hearing is not made on the Commission’s official forms (Form 18 or Form 33, respectively), the employee will be asked to complete those forms.

AGREEMENTS TO PAY COMPENSATION

All agreements to pay compensation must be approved by the Commission. The most common forms of agreements are the Form 21 for the initial period of disability, the Form 26 or 26A for subsequent periods of disability, and the Compromise Settlement Agreement (or “clincher”) under which the employee receives a lump sum of money and payment of any remaining medical compensation bills in return for terminating the claim and any right to reopen it.

In cases of direct pay or pay without prejudice, a Form 60, Employer’s Admission of Employee’s Right to Compensation, or a Form 63, Notice to Employee of Payment Without Prejudice, should be submitted by the employer or the insurance carrier as soon as the employee becomes entitled to compensation. A copy should be sent to the employee, and the original of the form should be sent to the Commission.

A Form 21, Agreement for Compensation for Disability, should state that the compensation is payable for the “necessary” period unless for some reason the period of temporary total disability or temporary partial disability is actually known (such as when it has already ended). The agreement may be submitted subject to future correction of the compensation rate used. Unless the employee successfully returns to work, dies, or enters into another agreement, the employer or insurance carrier must apply to the Commission to terminate the compensation on the Commission’s Form 24 or request a hearing once the Form 21 has been approved.

A Form 21, 26, or 26A agreement may be entered into after the end of the healing period to provide for payment of temporary partial disability benefits or permanent partial disability benefits based upon a doctor’s evaluation, or “rating,” of any remaining physical permanent impairment. The employee is entitled to a single second opinion limited solely to the percentage of an impairment rating by a physician of his or her choice at the employer or insurance carrier’s expense when the physician approved by the employer or insurance carrier has rated and/or released the employee. The employee retains the right to reopen the case for further benefits within two years of the last payment of compensation if the employee can show that there has been a substantial change in the condition that resulted from the compensable injury.

The Compromise Settlement Agreement, or “clincher,” provides for payment of all cash benefits and medical compensation due, and an additional sum in return for the employee’s giving up his or her right to reopen the case based upon change of condition.

Attorneys’ Fees

It is unlawful for any attorney or other person to accept a fee, gift, or any remuneration for any services rendered in connection with the claim of a worker seeking compensation unless such fee or other consideration has been approved by the Commission. The Commission has the sole discretion to award attorneys’ fees.
FREQUENTLY ASKED QUESTIONS

1. **Who is required to provide workers’ compensation coverage?**
   
   In general, any employer who employs three or more employees.
   
   **NOTE:** Every executive officer selected or appointed and empowered in accordance with the charter and bylaws of a corporation is considered an employee of such corporation. For example, a corporation with two officers and one employee would be required to provide workers’ compensation coverage. Any employer in which one or more employees are employed in activities that involve the use of or presence of radiation is required to have coverage. Volunteer executive officers of certain non-profit corporations also count as employees for the purposes of determining whether coverage is required.

2. **What if my employer does not have workers’ compensation insurance?**
   
   The employee should report the lack of workers’ compensation insurance or approved self-insurance to the Commission’s Fraud Section at (888) 891-4895 and, if injured, should file a Form 18 and Form 33 with the Commission.

3. **What must an employee do when an injury occurs?**
   
   Report the injury to the employer, orally and in writing, *immediately* and in any event within thirty days by completing a Form 18.

4. **What should be done if the employer fails or refuses to report an injury?**
   
   The employee should file a claim on a Form 18 (or Form 18B for lung disease) within two years of the accident with the Commission.

5. **Who provides and directs medical treatment?**
   
   The employer or its insurance company, subject to any Commission orders, provides, and directs medical treatment. The employee may petition the Commission to change physicians or approve a physician of employee’s selection. However, payment by the employer or insurance carrier is not guaranteed unless written permission to change physicians is obtained from the employer, insurance carrier, or Commission before the treatment is rendered.

6. **When can reimbursement for sick travel be collected?**
   
   If an employee travels twenty miles or more round-trip for medical treatment in workers’ compensation cases, they are entitled to collect for mileage at the current IRS mileage reimbursement rate.
   
   **NOTE:** The Commission has given the self-insurers and insurance carriers permission to pay drug and travel expenses directly to the employee without approval from the Commission.

7. **What happens if, in an emergency, the employer fails or refuses to provide medical treatment?**
   
   The employee may obtain the necessary treatment from a physician or hospital of his or her own choice, but must promptly request the Commission’s approval.

8. **When do I become eligible for lost wage compensation?**
   
   No compensation is due for the first seven days of lost time unless the disability exceeds twenty-one days. Therefore, the first check will not include payment for days one through seven. Payment for those days will be made should the disability continue beyond twenty-one days.
9. **How often are compensation payments made?**
   Weekly, but the Commission may authorize payments on a monthly basis in some circumstances.

10. **At what rate of pay?**
    66 2/3% of the average weekly wage, not to exceed the maximum per week for the year of injury. The maximum weekly benefit is adjusted annually and can be found on the Commission’s website.

11. **How long is the employee eligible to receive lost-time weekly benefits?**
    Until the employee is able to return to work if the injury occurred prior to June 24, 2011. For claims arising on or after June 24, 2011, the employee is limited to 500 weeks from the date of first disability unless the employee qualifies for extended compensation.

12. **What happens if the employer denies the claim?**
    If liability for payment of compensation is denied, the Commission, employee, his or her attorney (if any), and all known providers of health care shall be promptly notified of the reason for such denial. The employer must detail the exact reason for the denial of liability.
    (a) If a claim is denied by the insurance company or self-insurer, the employee may request a hearing before the Commission by submitting a Form 33, *Request for Hearing*.
    (b) Medical providers may bill the employee only after it has finally been determined that the claim is not a compensable workers’ compensation claim.

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**NOTICE**

**THIS BULLETIN IS NOT INTENDED TO GIVE LEGAL ADVICE OR ANSWER ALL QUESTIONS REGARDING WORKERS’ COMPENSATION.**
Need Workers’ Compensation Information? Need Help with a Claim?

If you have **not** hired an attorney and need more information or have a workers’ compensation inquiry, please call:

**Workers’ Compensation Information Specialists**

(800) 688-8349, (919) 807-2501, Fax: (919) 715-0282, or infospec@ic.nc.gov

Workers’ Compensation Information Specialists serve as the information source for the North Carolina Industrial Commission and answer questions pertaining to all aspects of workers’ compensation. The North Carolina Industrial Commission cannot provide you with legal advice on your claim.