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Florida Workers' Compensation Depositions

1. What is a deposition?

A deposition is testimony under oath in response to questions by lawyers who are representing parties in a legal matter. The plaintiff who brings the legal claim and the defendant against whom it is brought are called parties to the legal action. In a workers' compensation claim, the injured worker, called the plaintiff or the claimant, is a party as is his employer and his employer's workers' compensation insurance carrier, together referred to as the employer/carrier. The person being questioned is called the deponent. The lawyers ask the deponent questions which he must answer much in the same manner as if he were called as a witness at a hearing before a judge or jury.

2. Whose deposition can be taken?

A party may depose (take the deposition of) anyone that the party believes may have some information bearing on the case. The employer/carrier routinely deposes the claimant (injured worker) in a workers' compensation claim. Either party may depose doctors or other witnesses. A party may elect not to take depositions for various reasons as part of that parties trial strategy.

3. Where are depositions held?

A deposition is usually held in either the office of one of the lawyers involved in the matter or at the office of a shorthand stenographic reporter, commonly called a court reporter. The lawyer or party who scheduled the deposition to be held directs where it is to be held.

4. Who attends depositions?

The deponent must be present and any other party to the legal matter may attend as may any lawyer representing a party to the matter. The deponent must attend and answer the questions under oath or risk being held in contempt of court. If the deponent is a party to a particular legal matter, such as an injured employee in a workers'

compensation matter, he must appear at the deposition at the time and place as indicated if either he or his lawyer is served a notice indicating another party wishes to take his deposition. If the deponent is not a party to the legal matter, he must appear at the deposition only if he is served a subpoena directing him to appear. The deponent's family members, friends, or other potential witnesses are generally not entitled to be present at the deposition.

5. How is the deposition conducted?

The party who scheduled the deposition is allowed first to question the deponent about any matter which may be of importance to the case. Before the questioning starts, the court reporter will swear in the deponent much like in court. After the lawyer who has scheduled the deposition has asked his questions and the deponent has answered them, the other parties' lawyers are entitled to ask questions if they desire. In a workers' compensation case, it is very common for the claimant's lawyer not to ask his own client any questions at the deposition since he may discuss these matters with his client outside the presence of the lawyer for the employer/carrier if he needs such information. The court reporter records word for word what everyone says at the deposition. Anyone who wants to purchase a typed transcript of the deposition may do so by contacting the court reporter and paying for such transcript.

6. Can deposition testimony be changed?

If any party orders the deposition transcribed, the court reporter will type the transcript and will contact the deponent to allow the deponent to read the transcript and note on a correction sheet any changes that need to be made, either because the court reporter took down some testimony incorrectly, or because the deponent remembers things differently and wishes to change one of his answers. If there are no corrections to be made, the deponent signs a correction sheet stating that the transcript is correct as is. The deponent may also waive his right to review the transcript and allow the court reporter to type it and send it to the parties without the deponent's review, but we advise a workers' compensation claimant never to do that.

7. Why are depositions taken and how are they used?

The primary reason for taking a deposition is to enable the lawyer who scheduled to discover any information that may be useful in the case and to further discover what the deponent will testify to if the matter goes to court. Since the deponent is placed under oath at the deposition, he will have some explaining to do if he tries to change his story in court at a later hearing. Unless the deponent is qualified as an expert in a particular field, such a doctor, or unless the deponent is a party to the legal matter, the deposition cannot be entered into evidence at a hearing unless all the parties agree.

8. What questions are asked at depositions?

The questions asked of the deponent at the deposition may involve anything to do with matters that are either relevant in the pending legal case, or which may lead to facts which may become relevant. Therefore, it is difficult to predict exactly what will be asked. In a workers' compensation case, the employer/carrier's lawyer will usually ask the claimant many broad background questions so that he understands everything about the claimant's education, work history, medical history, and anything else that may become important in the case. There are very few questions that the employer/carrier's lawyer cannot ask a claimant, aside from questions about conversations the claimant has had with his lawyer or his lawyer's staff.

9. Does the deponent have to answer all the questions?

The topics that the lawyer scheduling the deposition is allowed to ask about are very broad. He may not ask a person about conversations or communication that person has had with his lawyer or his lawyer's staff. The deponent is not required to answer any questions that may call for him to admit to a crime. Other than these exceptions, the deponent usually has to answer everything asked of him. If there is something objectionable asked, the deponent's lawyer will object and may instruct his client (the deponent) not to answer. However, there are many depositions in which there are no objections made.

10. What does the deponent bring with him to the deposition?

The deponent should not bring anything with him to the deposition other than what his lawyer instructs him to. The claimant in a workers' compensation matter sometimes hurts his own case by bringing various documents with him to the deposition and pulling them out to refer to them at the deposition. This only allows the employer/carrier's lawyer to ask additional questions and to review at that time documents that he may not have seen.

— Things for the claimant to keep in mind about his deposition —

Do not be concerned if your lawyer knows the court reporter or the other lawyers

If your lawyer is very experienced in his field, he will frequently know the court reporter and the lawyers on the other side from previous hearings and depositions. Therefore, do not be alarmed if your lawyer knows the court reporter or the insurance carrier's lawyer and speaks to them upon entering the deposition room.

Dress appropriately

This does not mean wear a suit and tie, but remember that the lawyer from the employer/carrier will be there questioning you and will be evaluating what type of appearance you make as a witness. You will want to make a neat appearance. You may wear slacks or shorts and a shirt with sleeves.

Wait for the questioner to finish the question before answering

Often the deponent is nervous and anxious to answer the question so that he interrupts the questioner before the questioner has completed the question. The court reporter is unable to record two people talking at once. Also, the deponent may not fully understand the question being asked until he allows the questioner to finish the question.

Wait to answer after any objections

Occasionally a question may be legally objectionable and one of the lawyers will interrupt by objecting. If a lawyer is objecting, you should wait until the objection is stated. He should then answer the question unless his lawyer has instructed him not to.

Do not guess at answers

No one expects you to remember every single fact about questions you may be asked. You should not guess at any answer but should instead let the questioner know that you are estimating and am not certain of the answer. For instance, if you are asked how long you worked for a particular employer and do not recall exactly, you may answer something like "I don't recall exactly, but it was probably about 5 to 6 months." This is a perfectly acceptable answer.

Do not use gestures and do not mumble

You must remember that the court reporter can only record sounds and not gestures. Any gestures made as part of an answer will not be recorded. For example, if you are asked where you are having pain and instead of saying "in my right arm just above the elbow", state "right here" while pointing to your right arm, it will be impossible later for anyone reading the deposition to understand where you were pointing. Similarly, if instead of answering "yes" or "no", you either shake your head or answer something like "uh-uh", the answer may not be taken down or may not be taken down correctly.

Do not discuss any attorney/client conversations

You cannot be required to discuss anything about conversations or communication between you and your lawyer or the lawyer's office staff. You should not volunteer anything about such communications and, if asked about them, should give your lawyer time to object to the question.

Once you answer a question, stop talking and wait for another question

Sometimes the attorney for the employer/carrier will not ask another question immediately after the claimant finishes answering the earlier question. He may do this with the hope that the claimant will continue to rattle on and keep talking perhaps giving away important information that was not asked. The employer/carrier lawyer may also try to get the claimant to keep talking by making facial gestures such as raising his eyebrows in nonverbal communication. The claimant should simply answer the question as briefly and honestly as possible and then be quiet and wait for the next question.

Do not volunteer information

You are required to attend the deposition and answer questions, but are not there to help the other side with their case. Sometimes, a deponent volunteers information that helps the other side. For instance, instead of answering a question about whether the deponent knows the name of a witness to the accident by truthfully answering "no", the deponent will sometimes try to help the other side. Instead of simply answering "no", he may say something such as "I don't know, but you need to talk to Clarence who was also working on our jobsite, because I think he knows the guy." Also, do not bring any documents into the deposition room unless your lawyer tells you to.

Your lawyer may not want to ask you any questions at your deposition

Your lawyer can speak with you in private before or after the deposition and therefore may not want to ask you any questions at the deposition with the employer/carrier's attorney there.

Tell the truth!

The insurance carrier has been and will continue to investigate everything you say. If you testify to something that is not true or is misleading, you may lose your rights to all workers' compensation benefits.