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Florida Workers' Compensation Settlements

There is no legal definition for the term settlement, but it usually means the claimant's (injured worker) giving up all of his past and future workers' compensation rights, both to money benefits and to medical benefits, in return for a lump sum payment from the employer/carrier (the employer for whom he worked when he was injured and its workers compensation insurance carrier). After the settlement, the employer/carrier is not responsible for any further workers' compensation benefits of any sort except those as expressly set forth in the settlement documents.

Under Florida law, workers' compensation settlements are purely voluntary. Neither side can force the other to settle. The parties frequently discuss settlement at the mediation conference, but settlements may occur at any stage of the case. There is no formula for computing what an employer/carrier will pay to settle the case. The carrier estimates the cost of the case from that point forward if it does not settle and bases its settlement evaluation on that figure. Likewise, the claimant estimates what he may draw in compensation money benefits and medical benefits from that point forward if he does not settle and bases his settlement proposal on that figure. Usually there is negotiation back and forth before the parties agree on a settlement figure.

If the claimant is not represented by an attorney, the settlement may take longer because the judge of compensation claims will require a live hearing to review the settlement documents. If the claimant is represented by an attorney, the parties do not need to attend a live settlement hearing.

The claimant usually must sign a settlement release stating the terms of the settlement and acknowledging that the claimant is giving up all workers' compensation rights, an affidavit attesting that he understands what he is doing in settling, and may have to sign additional documents depending on the settlement. The employer/carrier will usually not settle the workers' compensation case unless the claimant also agrees to settle all potential legal claims against the employer and carrier, such as claims for unlawful discharge of employment, discrimination in employment, wrongful payment of overtime, etc.

Florida law requires that the claimant pay his own attorney fees out of the settlement proceeds. The attorney fee will be based upon the statutory guideline attorney fee in the Florida Workers' Compensation Law (see chapter 31, Attorney Fees for Representing a Claimant, in the Florida worker's compensation law booklet that we gave you). In addition to his attorney fee, the claimant will also have to pay his case costs from his portion of the settlement proceeds. The attorney fee the claimant pays from the settlement is in addition to any other attorney fee that his attorney may be paid from the employer/carrier or from the claimant as a result of securing benefits other than the settlement.

The claimant must pay from his portion of the settlement proceeds any liens asserted by Medicare, Medicaid, the Veteran's Administration, or a health insurance company that provided medical care for the workers' compensation injury. The claimant will also have to pay from his portion of the settlement proceeds all or part of past due child support, depending on the amount of the past due child support and the amount of the settlement.

Federal law requires the claimant to take Medicare's interest into account in the workers' compensation settlement. If either, 1) the claimant is eligible for Medicare at the time of settlement, or 2) the settlement is over \$250,000.00 and the claimant would likely become eligible for Medicare within 30 months of the settlement, Medicare recommends that the parties submit the settlement documents showing the allocation of the settlement between compensation money benefits and future medical benefits to Medicare to show that the claimant is setting aside set a reasonable amount from the settlement proceeds for the claimant to pay his future medical care. This means that if one of the above two conditions are met, the claimant must set aside a reasonable amount from his share of the settlement proceeds to pay for future medical expenses needed as a result of the workers' compensation injury. This can be done by either having the claimant set aside a special bank account in which to hold the money to pay for future medical care needed as a result of the workers' compensation injury, or by having a professional custodian hold the money and pay such future medical bills. In some cases, the employer/carrier may require prior approval from Medicare as to the amount set aside for future medical expenses.

If the claimant properly takes Medicare's interest into account and spends a reasonable figure from the settlement on his workers' compensation injury future medical care using the workers' compensation fee schedule rates, Medicare may thereafter pay for the medical care needed as result of the workers' compensation injury. If the claimant does not properly take Medicare's interest into account, Medicare may in the future refuse to pay any of the medical expenses needed as a result of the workers' compensation injury or may agree only to pay such future medical expenses after the claimant has paid what Medicare considers to be a reasonable amount that should have been withheld from the settlement proceeds for such expenses.

A claimant meeting one of the two conditions above can either set aside from the settlement proceeds what he estimates to be a reasonable amount for his future

medical care, or he can first seek Medicare's approval of such amount. If he proceeds with the settlement without first seeking Medicare's approval of the amount set aside for future medical care, he runs the risk that Medicare may not pay for his future medical care after he spends the amount he set aside. The safest way to proceed is for the claimant to seek Medicare's approval as to the amount set aside for future medical care before the settlement is agreed to, or at least before the settlement amount is disbursed. However, since Medicare may take months to decide if they agree with the amount set aside, seeking Medicare's approval first will likely delay the settlement.

IMPORTANT - once a settlement offer is made and accepted by the other side, it is a binding contract and neither side can back out. This may be true even if the settlement involves signing additional documents.

● common questions about Florida workers' compensation settlements ●

1. What is a workers' compensation settlement?

There is no exact legal definition but this usually means a lump sum payment by the employer/carrier (the employer and its workers' compensation insurance carrier) to the claimant (injured worker) in return for the claimant's giving up all past and future workers' compensation rights from the accident or accidents being settled.

2. Does the claimant have a right to a settlement of his Florida workers' compensation case?

No. Florida workers' compensation settlements are purely voluntary. Neither the claimant nor the employer/carrier can force the other to settle the case. No judge or court can award a settlement or force either side to settle the case.

3. Who decides when to negotiate a settlement?

Since settlements are voluntary, there are no rules on this. Either party may propose a settlement at any time and the case may be settled at any time, as long as the claimant is represented by an attorney. If the claimant is not represented by an attorney, there are additional rules governing settlements which involve additional paperwork, a requirement that the claimant wait to settle until he is placed at maximum medical improvement by all his doctors, a requirement that the settlement not be effective unless a workers' compensation judge approves it, and perhaps a live hearing in front of a workers' compensation judge.

4. Is a party required to keep its settlement offers open?

No. Both the claimant and the employer/carrier can withdraw its settlement offer and refuse to settle *but only up until the settlement proposal is accepted by the other side.*

5. After agreeing on a settlement, can either side change its mind and reopen the case?

No. If the claimant tells his attorney to tell the employer/carrier that the claimant accepts a settlement offer, the claimant will be bound by the settlement offer and cannot later change his mind and back out of the settlement.

6. How is the settlement amount figured?

The settlement amount is negotiable and there is no formula for computing it. The workers' compensation insurance carrier estimates what it will have to pay in future workers' compensation benefits if the case does not settle, and bases its settlement offer primarily on that estimate. Since the claimant is settling workers' compensation benefits, only workers' compensation benefits figure into the settlement amount.

IMPORTANT to remember - the settlement amount is based upon what the claimant is likely to draw from that point forward in workers' compensation medical and compensation benefits. Since matters such as the following do not affect workers' compensation benefits payable, they are not figured into the amount of the workers' compensation settlement: claimant's inability to earn as much in the future as before the accident; how much money the claimant wants or needs; the employer/carrier's past behavior including negligence; claimant's pain and suffering; what the claimant lost as a result of the accident, such as apartment, car, job.

7. How much does the claimant clear from the settlement amount?

That depends on the claimant's attorney fees, case costs, and any other legal liens or lawful deductions as explained below. Per Florida law, the claimant must pay his own attorney fees from the settlement proceeds. The employer and the workers' compensation insurance carrier cannot pay the claimant's attorney fees. It must be deducted from the settlement. The amount of the attorney fees need to be approved by the workers' compensation judge.

There may be other deductions from the claimant's portion of the settlement amount. For example, government agencies and programs (Medicare, Medicaid, social services, VA, etc.) may have a right to reimbursement from the settlement proceeds if the claimant has received benefits from such agency or program.

If the claimant owes past due child support, some or all of the past due amount must be deducted from the claimant's portion of the settlement. The workers' compensation judge will decide the amount from the settlement to be paid to past due child support.

The claimant is given a Closing Statement to sign that reflects the amount of the settlement, the case costs to be deducted from the claimant's share of the settlement, the attorney fees to be paid by the claimant from the settlement, and the net amount to the claimant.

8. Must the workers' compensation judge approve the settlement?

If the claimant is not represented by an attorney, the workers' compensation judge must review and approve all the settlement papers, review all the medical records, and will schedule a live hearing to take testimony about the proposed settlement. If the claimant is represented by an attorney, a live hearing is usually not required and the claimant's attorney will submit the settlement documents to the workers' compensation judge. Therefore, the settlement usually moves faster if the claimant is represented by an attorney.

9. How long does the settlement take?

That depends on many factors such as how long it takes for the parties to agree on the exact settlement language. The settlement will nearly always proceed faster if the claimant is represented by an attorney since there are additional legal requirements for settlement if the claimant is not represented by an attorney.

10. When does the claimant receive the settlement proceeds?

If the claimant is represented by an attorney, the employer/carrier must forward the settlement check to the claimant's attorney once the workers' compensation judge approves the attorney fee and stipulation on past due child support. The employer/carrier must do so within the time agreed to by the parties. If no time period was agreed to, the check must be mailed fourteen (14) days after the judge's order. The claimant's attorney is required by Florida law to hold the settlement check in a special bank escrow account until it is safe to disburse the settlement funds. The settlement is then distributed per the closing statement that has been signed by the claimant and his/her attorney.

Our law firm policy is to disburse the settlement funds on the 6th banking day after the date the settlement check was deposited in the special escrow account, unless the bank indicates that the settlement check has not yet cleared. Important – the business policy of holding the settlement check in escrow for six (6) days is not to be confused with the bank regulations on placing holds on accounts. Even though the bank may have removed the hold from the account after three (3) days, good business policy requires that it be held longer to ensure that the settlement check clears.

11. Can the claimant's attorney advance the claimant money before disbursing the settlement funds?

No. Florida law does not allow an attorney to lend money to his client or even to advance money to his client to be repaid out of a pending settlement.

12. What happens if the case never settles?

If the case never settles, the claimant can continue to apply for and draw any workers' compensation benefits to which he is entitled. If the claimant believes he is entitled to workers' compensation benefits that are not being provided by the employer/carrier, he may file a Petition for Benefits seeking such benefits that may ultimately lead to a trial-type hearing in front of a workers' compensation judge. The disability benefits usually end after a certain time, but the medical benefits may go on forever.

The claimant can continue to apply for workers' compensation benefits unless a 365-day gap in benefits and medical care occurs. This 365-day rule does not apply for the first two (2) years after the accident. Beginning on the date two (2) years after the accident occurred, there can never be a day in which the claimant did not receive some workers' compensation benefit, either a workers' compensation check or a medical benefit, within the previous 365 days. If that occurs, the entire case is over and the claimant is not entitled to any further workers' compensation benefits from that accident. This rule is called a Statute of Limitation.