



# International Union of Operating Engineers Local 94

A guide for what to do in the event of  
an on the job injury

HACH  & ROSE  
Attorneys at Law

# Member Safety Should Always Be The Primary Concern

- **SAFETY REGULATIONS**: New York State Labor Law; OSHA, NY Industrial Codes, etc.
- **REPORTING A VIOLATION**: Any employee in NYS may report any suspected violation or unsafe practice to the Dept. of Labor; OSHA, NY Building Dept. (*e.g., Asbestos; failure to provide safety equipment or unsafe practices, etc.*)
- **EMPLOYER CANNOT PENALIZE EMPLOYEE**: An employer may not penalize or discharge an employee because he or she has complained of such a violation.

# Your safety (cont.)

- **DESPITE SAFEGUARDS, ACCIDENTS & INJURIES DO OCCUR**: Thanks to the unrelenting work by organized labor in the area of workplace safety, workplace injuries have steadily declined over the past few decades. Despite such strides, on the job injuries continue to occur and when they do, they are often catastrophic to the affected member and his/her family.
- **SUFFERED AN ACCIDENTAL INJURY?** If you or someone on the job is injured, there are multiple forms of compensation available to the injured member and his/her family.
  - 1) WORKERS COMPENSATION;
  - 2) THIRD-PARTY LAWSUIT; ‘Ownership structure’
  - 3) SOCIAL SECURITY DISABILITY;
  - 4) NYS DISABILITY; etc.

# #1 Workers' Compensation

**INTRODUCTION:** All employees in NYS are entitled to workers compensation benefits provided the member is injured in the course of his/her employment;

**EXCLUSIVITY:** For accidental injuries and occupational illnesses, you cannot sue your employer in New York State; However, due to the ownership structure of most buildings in NY, third party lawsuits are a viable option for many Local 94 members;

**NO-FAULT SYSTEM:** Unless the employee was under the influence of alcohol or drugs and that impairment was the sole cause of the employee's injury, NYSWC will pay financial and medical benefits for your work-related injury.

**ACCIDENT v. OCCUPATIONAL DISEASE:** There are two ways one can recover under the New York State Workers Compensation Laws:

# Workers Compensation Cont...

**ACCIDENTAL INJURY**: An 'accidental injury' occurs at a specific time and place. For example, '*On Dec. 12, 2012 John Smith fell from a ladder while repairing a fan motor.*' Such accidents are largely uncontested by the employer's workers compensation insurance carrier;

**OCCUPATIONAL DISEASE**: An 'occupational disease' is a condition or illness that manifests at a later date. Examples include: Asbestosis; Occupational Hearing Loss; COPD; Various Cancers; Carpal Tunnel Syndrome; Repetitive Stress Injuries to the Back and Neck, etc.

# Workers Compensation Pay Rates

Date of Accident	Weekly Max (TD/PD)
July 1, 2008 – June 30, 2009	\$550.00
July 1, 2009 – June 30, 2010	\$600.00
July 1, 2010 – June 30, 2011	\$739.83
July 1, 2011 – June 30, 2012	\$772.96
July 1, 2012 – June 30, 2013	\$792.07
July 1 <sup>st</sup> of each succeeding year	2/3 of NYSAWW

## #2 Third Party Lawsuits

- **INTRODUCTION**: Third party lawsuits, arising from work-related accidents and illnesses, are not limited by the amounts received in Workers Compensation Claims;
- **BENEFITS AVAILABLE**: Compensatory damages available to members who may have a potential 3<sup>rd</sup> party action are:
  - **PAST & FUTURE LOST WAGES**;
  - **PAST & FUTURE MEDICAL COSTS**;
  - **PAST & FUTURE PAIN & SUFFERING**;
  - **LOSS OF ANNUITY & PENSION BENEFITS**;
  - **LOSS OF CONSORTIUM** (*if married*)

# #2 Third Party Lawsuits

- IDENTIFICATION OF 3<sup>RD</sup> PARTY SUITS:
  - We cannot stress enough how many members we have come across that consulted an attorney only to be told they do not have a viable third party claim;
  - The nuances of the NYS Labor Law are many. One simple fact that may seem insignificant could mean the difference between a lifetime of financial hardship and a lifetime of financial security
- EXAMPLE:
  - One Local 94 member came to us with a settlement agreement for his case in the amount of \$60,000. After taking the case over from the prior attorney, we obtained a \$2M recovery for the member.

## #2 Third Party Lawsuits

- Generally in New York, injured workers may not bring a lawsuit against their employer for work-related injuries and are limited to workers' compensation benefits.
- However, it is important to seek legal advice when you are injured in order to protect your rights in obtaining workers' compensation and to determine whether a third-party contributed in any way to your injury.

# Third Party Lawsuits Cont...

- **FAILURE TO RECOGNIZE 3<sup>rd</sup> PARTY LAWSUITS:**
  - WORKERS COMPENSATION ATTORNEYS OFTEN FAIL TO RECOGNIZE 3<sup>RD</sup> PARTY LAWSUITS (*& actually have a disincentive to identify such claims*);
  - ATTORNEYS WITHOUT A CONCENTRATION IN NYS LABOR LAW OFTEN FAIL TO RECOGNIZE SUCH CLAIMS;
  - MEMBERS OFTEN FAIL TO RECOGNIZE 3<sup>RD</sup> PARTY LAWSUITS AS WELL
- **WHY CHOOSE HACH & ROSE?**
  - WE BUILT HACH & ROSE TO REPRESENT UNION MEMBERS; MORE SPECIFICALLY, WE BUILT HACH & ROSE AROUND THE NEEDS OF IUOE MEMBERS;
  - HIGHLY RESPECTED AMONG PEERS AND JUDGES;
  - RECOGNIZED AS ONE OF THE TOP PI FIRMS IN NEW YORK;

# Third Party Lawsuits Cont...

- WHY CHOOSE HACH & ROSE continued:
  - AV-RATED PRE-EMINENT™ LAW FIRM;
  - TOP LAWYERS™ IN NEW YORK;
  - 4 OF THE TOP 100 VERDICTS & SETTLEMENTS™ IN NEW YORK LAST TWO YEARS;
  - OUR ATTORNEYS UNDERSTAND WORK PERFORMED BY IUOE MEMBERS;
  - TOP LABOR LAW VERDIT OF 2012
  - MEMBER OF MILLION™ AND MULTI-MILLION DOLLAR ADVOCATES FORUM™
- WE ENSURE EVERY ASPECT OF YOUR CASE IS HANDLED FROM BEGINNING TO END.

# Third Party Lawsuits Cont...

- **NEW LAW**: Over the past 11 years of representing IUOE Local 94 members, Hach & Rose has managed to extend the protections of the NYS Labor Law;
- **WHAT IS THE NYS LABOR LAW?**
  - NYS Labor Law protects ‘covered workers’ performing various tasks which ultimately must be considered ‘covered work.’  
Examples include: Repairs; Painting; Cleaning; and other tasks.
- **ROUTINE MAINTENANCE DEFENSE**: Routine maintenance is the classic defense in these cases. We are experts at ensuring the routine maintenance defense can be defeated. A task considered routine maintenance in one Appellate division may not be routine maintenance in another.

# #3 Social Security Disability

- In the event that you become totally disabled as a result of a work-related injury, you may be entitled to Social Security Disability Benefits.
- To qualify, you generally must be:
  - Totally disabled
    - You cannot do the work that you did before;
    - It is determined that you cannot adjust to other work because of your medical condition; and
    - Your disability has lasted or is expected to last for at least 1 year or resulted in death

# #4 New York State Disability

- **INJURED OR DISABLED OFF THE JOB?** NYS offers a benefit of 50% of weekly wages to a maximum of \$170 per week of benefit.
- **WAITING PERIOD:** The normal waiting period for Disability Benefits Law “DBL” benefits to start is seven days, and benefits can extend to a maximum duration of 26 weeks.
- **POSSIBLE ‘ENHANCED’ BENEFIT:** It is possible for carriers to offer benefits that extend beyond the statutory DBL coverage known as "enhanced" or "enriched" DBL. These enhanced benefits can include a shorter waiting period and/or higher weekly cash benefit.

# What To Do If You Are Injured On The Job?

- If you are injured on the job, you must follow these simple steps:
- 1) **SEEK MEDICAL TREATMENT:**
- 2) **NOTIFY:** Notify your supervisor or employer about the injury and the way in which it occurred as soon as possible but within 30 days. It is best, *if possible*, that you contact your attorney prior to providing written notice.
- 3) **30 DAY REQUIREMENT FOR WC:** An injured employee who fails to inform his or her employer, in writing, within 30 days after the date of the accident, may lose the right to workers' compensation benefits. In the case of an occupational disease, you must notify within 30 days of the date you 'knew or should have known the condition or illness was employment related.'

# What To Do If You Are Injured On The Job? (cont.)

## INJURED EMPLOYEE MUST FILE C-3:

- ACCIDENTS: Form C-3 must be filed within 2 years of the date of the accident.
- OCCUPATIONAL DISEASES: Form C-3 must be filed within 2 years of the date the employee knew or should have known the medical condition was work-related

## INJURED EMPLOYER MUST FILE C-2:

*Employer is required to file a C-2 Form within 10 days of notification of the accident/illness;*

*Within 18 days of the Employer's filing, payments to injured employee should begin, if uncontested.*

# What To Do If You Are Injured On The Job? (cont.)

- THEREAFTER:
  - Follow your doctor's instructions; You are required to attend independent medical examinations;
  - Attend hearings when notified to appear;
  - If you are unsure of any aspect of the process, call a Hach & Rose attorney, we will provide all information needed.
- IF POSSIBLE, TAKE PHOTOGRAPHS AND PRESERVE EVIDENCE:
  - Photographs of the injury causing device (*e.g., Ladder, etc.*);
  - Photographs of the injury, including your face for ID purposes.

# IUOE Local 94 Benefits

- All Local 94 members are VIP's at our firm and are treated accordingly. Although we primarily handle Third Party Labor Law cases and ensure your Workers' Compensation and Social Security claims are handled as well, we are always available to each and every one of you for advice and counsel in all other areas of the law and at no charge to you.