

**2012**

**Charlotte, NC**  
 PO Box 30307  
 28230  
 P 704.643.6303  
 F 704.643.2376

**Raleigh, NC**  
 PO Box 30516  
 27622  
 P 919.719.8200  
 F 919.510.9825

**Columbia, SC**  
 PO Box 12519  
 29211  
 P 803.779.2300  
 F 803.748.0526

**Charleston, SC**  
 PO Box 877  
 29402  
 P 843.576.2900  
 F 843.534.0605

**Greenville, SC**  
 PO Box 2980  
 29602  
 P 864.239.4000  
 F 864.242.3199

**Myrtle Beach, SC**  
 PO Box 1349  
 29578  
 P 843.848.6000  
 F 843.449.2306

mgclaw.com

**Maximum Compensation**

January 1, 2012	\$862.00
January 1, 2011	\$836.00
January 1, 2010	\$834.00
January 1, 2009	\$816.00
January 1, 2008	\$786.00
January 1, 2007	\$754.00

**Fractional Weeks**

One Day	.1428571
Two Days	.2857142
Three Days	.4285713
Four Days	.5714285
Five Days	.7142857
Six Days	.8571428

**NCIC Rule 607**

Upon written request, either party must provide the requesting party a copy of the following documents within 30 days: medical, vocational and rehabilitation reports, employment records, Industrial Commission forms, and written communications with medical providers.

**Medical Treatment [§97-25]**

The employee may make a written request for a second opinion examination with a physician. If the employer denies the request or the parties cannot agree on a physician within 14 calendar days of the written request, the employee may request that the NCIC order a second opinion examination to be paid for by the employer.

An employee may select his own physician to assume his care subject to the approval of the NCIC. The employee must show by a preponderance of the evidence that the change is reasonably necessary. The NCIC may disregard or give less weight to the opinions of a physician who provided unauthorized medical treatment.

An employee's refusal to accept medical compensation when ordered by the NCIC is grounds for a suspension of benefits, unless the employee's refusal was justified. Any order suspending compensation pursuant to G.S. 97-18.1 shall specify what action the employee should take to end the suspension and reinstate benefits.

**Independent Medical Evaluations (IME) [§97-27(a)]**

An employee must be present for an IME if requested by the employer or ordered by the NCIC, even in denied cases. The employee must be given a copy of the IME report within 10 business days from receiving the report. An employer may communicate, either orally or in writing, with an IME physician chosen by the employer regardless of whether the physician examined the employee. No facts learned by the physician are privileged.

If the employee unjustifiably refuses to submit for the IME, his right to compensation and to prosecute his claim may be suspended while such refusal persists. When seeking to suspend compensation on this basis, an employer does not need to first obtain an order compelling the employee's attendance at said evaluation.

**Access to Medical Information [§97-25.6]**

Employers are not required to obtain a HIPAA release or other authorization to obtain the medical records of an employee as long as the records are related to the claim. When the medical treatment is denied, the employer shall provide the employee with contemporaneous written notice of the request for records. The employer must provide a copy of any records received to the employee within 30 days of receipt.

The employer may communicate with the employee's authorized physician in writing, without the express authorization of the employee, to obtain relevant information not available in the employee's medical records. The employee must be provided with contemporaneous written notice of the written communication. The employee must be given a copy of the physician's response within 10 business days after receiving the response. The employer may request the following information:

- the diagnosis of the employee's condition;
  - the appropriate course of treatment;
  - the anticipated time that the employee will be out of work;
  - the relationship, if any, of the employee's condition to the employment;
  - work restrictions resulting from the condition;
  - the kind of work for which the employee may be eligible;
  - the anticipated time the employee will be restricted; and
  - any permanent impairment resulting from the condition.
- An employer may communicate orally with the authorized

physician to obtain relevant medical information not contained in the employee's medical records, not available through written communication and not otherwise available to the employer. The employer must provide the employee with notice of the oral communication and provide the employee with an opportunity to participate at a mutually convenient time. The employer must provide the employee with a written summary of the oral communication within 10 business days if the employee does not participate.

Notwithstanding the above, an employer may submit additional relevant medical information not already contained in the employee's medical records to the authorized physician and may communicate in writing with the physician in accordance with the following procedure:

1. The employer notifies employee in writing of the intended communication and provides a copy of the proposed communication.
2. The employee has 10 business days from postmark or email/fax verification to consent or object.
3. If the employee either consents or does not timely object, the employer may submit information directly to the physician.
4. With a timely objection, the employee may request a protective order to halt the communication until the Commission enters a ruling.

**Fees for Records from Medical Providers (§ 97-26.1)**

The provider can charge a minimum fee of \$10.00, or the provider may charge \$0.50 per page for the first 40 pages and \$0.20 for all additional pages.

**Suitable Employment [§97-32; 97-2(22)]  
 Claims Arising on or After June 24, 2011**

**Pre-MMI:** Suitable employment includes any available employment within the claimant's work restrictions.

**Post-MMI:** Suitable employment is employment that the employee is capable of performing considering the employee's:

- pre-existing and injury-related physical and mental limitations,
- vocational skills,
- education,
- experience, and
- within a 50-mile radius of the employee's residence at the time of injury or the employee's current residence if the employee had a legitimate reason to relocate

**Vocational Rehabilitation [§97-32.2]**

**Claims Arising on or After June 24, 2011:** In compensable claims, an employer may assign vocational rehabilitation at any point. If an employee has not returned to work or has returned to work earning less than 75% of his average weekly wage and is receiving TPD, the employee may request vocational rehabilitation services so long as the education and retraining is reasonably likely to substantially increase the employee's wage earning capacity.

**Death Benefits [§97-38]**

**Claims Arising on or After June 24, 2011:** 500 weeks are paid to dependants for death within 6 years of the accident or 2 years of the final determination of disability. Burial expenses of \$10,000 are also allowed.

**Travel Expenses**

Employee is entitled to travel reimbursement if the travel is medically necessary and the mileage is 20 miles or more roundtrip. The Commission adjusts the mileage reimbursement rate automatically when the Internal Revenue Service adopts its yearly mileage reimbursement amounts. The maximum fees set forth for travel to and from the place of medical attention for 2011 are as follows: 51 cents per mile for travel January 1, 2011 – June 30, 2011; 55 cents per mile after July 1, 2011; \$45.00 per night for lodging; and up to \$28.00 per day for meals.

**Scheduled Injuries § 97-31**

Bodily Loss	Max. Weeks	Bodily Loss	Max. Weeks	Bodily Loss	Max. Weeks
Thumb	75	Great Toe	35	Leg	200
First Finger	45	Another Toe	10	Eye	120
Second Finger	40	Hand	200	Hearing (One Ear)	70
Third Finger	25	Arm	240	Hearing (Both Ears)	150
Fourth Finger	20	Foot	144	Back*	300

\*Loss of 75% or more of the back is total industrial disability & compensated for 100% loss.

# 2012

NC Workers' Compensation Attorneys  
as of January 1, 2012

## Charlotte

- Andy Bernardini** 704.405.4606  
abernardini@mgclaw.com
- Chuck Cheney** 704.405.4573  
ccheney@mgclaw.com
- David Galbavy** 704.405.4626  
david.galbavy@mgclaw.com
- Adrienne Gilman** 704.405.4667  
adrienne.gilman@mgclaw.com
- Kara Glidewell** 704.405.4609  
kara.glidewell@mgclaw.com
- Joseph Hamrick** 704.405.4572  
jhamrick@mgclaw.com
- George Kurani** 704.405.4570  
gkurani@mgclaw.com
- Jason McConnell** 704.405.4642  
jason.mcconnell@mgclaw.com
- Daniel McCullough** 704.405.4663  
daniel.mccullough@mgclaw.com
- Viral Mehta** 704.405.4576  
viral.mehta@mgclaw.com
- Sally Moran** 704.405.4579  
sally.moran@mgclaw.com
- Eloise Morgan** 704.405.4637  
eloise.morgan@mgclaw.com
- John Morris** 704.405.4569  
john.morris@mgclaw.com
- Rod Sherman** 704.405.4624  
rsherman@mgclaw.com
- Rob Starnes** 704.405.4578  
rstarnes@mgclaw.com
- Andrew Ussery** 704.405.4605  
aussery@mgclaw.com
- Cameron Wesley** 704.405.4668  
cwesley@mgclaw.com
- R.J. Williams** 704.405.4670  
rj.williams@mgclaw.com

## Raleigh

- Ryan Bisplinghoff** 919.719.8250  
ryan.bisplinghoff@mgclaw.com
- Luke Bumm** 919.719.8244  
luke.bumm@mgclaw.com
- Laura Carter** 919.719.8210  
lcarter@mgclaw.com
- Webster Harrison** 919.719.8209  
webster.harrison@mgclaw.com
- Jack Holmes** 919.719.8205  
jholmes@mgclaw.com
- Chrystina Kesler** 919.719.8258  
chrystina.kesler@mgclaw.com
- Carolyn Marcus** 919.719.8214  
cmarcus@mgclaw.com
- Trula Mitchell** 919.719.8226  
tmitchell@mgclaw.com
- Benjamin Moeller** 919.719.8219  
ben.moeller@mgclaw.com
- Layla Santa Rosa** 919.719.8227  
layla.santarosa@mgclaw.com

### Effective Increase in Processing Fees

Effective January 1, 2010, processing fees for Form 24 Applications increased to \$175.00 and processing fees for Form 21, 26 or 26A Agreements increased to \$250.00. The processing fee for a clincher is \$375.00.

### Time Periods

#### Employer's First Report of Injury (§ 97-92)

Within 5 days from knowledge or allegation of injury if more than 1 day missed or \$2,000 in medical expenses.

#### Admit or Deny Employee's Right to Compensation (§ 97-18)

At the earliest practicable time; subject to sanctions if not filed within 30 days of receiving a Form 18.

### Payment Without Prejudice (§ 97-18)

Payments may continue for 90 days from date employer has written or actual notice of injury or death (may apply for 30-day extension). Must file form to deny before expiration of 90-day period (or extension) or waive right to contest compensability of and liability for claim.

#### Waiting Period (§ 97-28)..... 7 days or parts thereof

#### Waiting Period Recoverable after Disability (§ 97-28) 21 days

#### Notice to Employer (§ 97-22)..... 30 days

### Statute of Limitations

#### File Initial Claim (§ 97-24 & § 97-58)..... 2 years

#### Change of Condition (§ 97-47)..... 2 years

**For specific questions regarding other changes to the Act as a result of the Protecting and Putting NC Back to Work Act, please see the MG&C Reform Act Cheat Sheet.**

## Commonly Used Forms

- Form 18** **Notice of Accident to Employer and Claim of Employee Representative or Dependant:** Filed by the employee. Employee has two years from date of injury or from last payment of medical compensation to file the Form 18. Within thirty (30) days of the worker filing the Form 18, employer must file a Form 60, 61 or 63 or face potential sanctions.
- Form 18M** **Employee's Claim for Additional Medical Compensation:** Filed by employee to request medical treatment beyond the normal time limit. Employers have thirty (30) days within which to accept or deny plaintiff's request for additional medical compensation and respond to the motion.
- Form 19** **Employer's Report of Injury to the Industrial Commission:** Must be filed within five (5) days of knowledge of injury if the employee missed more than one (1) day of work OR the medical compensation is greater than \$2,000.00. Form 18 must be attached.
- Form 22** **Statement of Days Worked and Earnings of Injured Employee:** Required by Industrial Commission to determine average weekly wage.
- Form 23** **Application to Reinstate Payment of Disability Compensation (G.S. 97-18(k)):** This form was created to comply with G.S. § 97-18(k), which became effective as a result of the recently enacted Reform Act. This form allows an employee to apply for reinstatement of indemnity compensation in accepted claims. Employers must respond in ten (10) days. A telephonic hearing regarding reinstatement of benefits will be held, thereafter, an Order will be issued regarding additional indemnity benefits.
- Form 24** **Application to Terminate or Suspend Payment of Compensation:** Used to request termination of benefits in situations where:
  - There has been a release to return to work without restrictions.
  - The worker is incarcerated.
  - There is a failure to comply with medical treatment or vocational rehabilitation when an order to compel has been entered.
  - There has been an unjustified refusal to return to suitable employment.
  - There has been a failure by the worker to return the Form 90, Report of Earnings.
- Form 26A** **Employer's Admission of Employee's Right to Permanent Partial Disability:** Pays the permanent partial disability rating, disfigurement, loss of teeth and hearing loss. Must be accompanied by Form 25R, Evaluation for Permanent Impairment.
- Form 28** **Return to Work**
- Form 28T** **Notice of Termination of Compensation by Reason of Trial Return to Work:** To be used if the employee has returned to work with work restrictions. Includes a nine (9) month trial period during which the employee can file a Form 28U, Unsuccessful Return to Work, for immediate reinstatement of benefits.
- Form 33** **Request that Claim be Assigned for Hearing:** Requests full evidentiary hearing before a Deputy Commissioner. Results in case being referred to mediation.
- Form 33R** **Response to Request that Claim be Assigned for Hearing:** Due within 45 days of receipt of Form 33.
- Form 60** **Employer's Admission of Employee's Right to Compensation:** Accepts the compensability of the event. A Form 60 does NOT create a presumption of disability. There is a presumption that medical treatment is related.
- Form 61** **Denial of Workers' Compensation Claim:** State with specificity the reason for the denial.
- Form 63** **Notice to Employee of Payment of Compensation without Prejudice**
  - Section 1. Indemnity Benefits:** Only to be used if there is a substantial question regarding the compensability of the claim. Payment of indemnity and/or medical compensation allowed for 90 days to further investigate claim and an additional 30 if permission obtained. After 90 days, claim deemed accepted if not denied.
  - Section 2. Medical Benefits Only:** Medical benefits paid without prejudice to later deny the claim. Not subject to 90 day requirement.
- Form 90** **Report of Earnings:** Used to confirm whether or not the employee is earning wages while receiving indemnity compensation. Must be sent certified mail, return receipt requested, and include a self-addressed stamped envelope for the return of the form, to the employee or his attorney, if represented.