Personal Injury
WHAT YOU SHOULD KNOW

OFF the job accidents
-and-
ON the job accidents

Since 1910

CSEA
New York's LEADING Union

LEGAL SERVICES PROGRAM
PERSONAL INJURY REPRESENTATION

If you are injured, call:

1-800-342-4146
Follow the prompts for Legal Services Program and select the option for "injury-related matters"
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawsuits: What, Why &amp; How</td>
<td>1</td>
</tr>
<tr>
<td>Elements of Successful Lawsuits</td>
<td>2</td>
</tr>
<tr>
<td>Types of Personal Injury Lawsuits</td>
<td>4</td>
</tr>
<tr>
<td>Timeframes &amp; Steps for a Lawsuit</td>
<td>10</td>
</tr>
<tr>
<td>Documentation for a Lawsuit</td>
<td>12</td>
</tr>
<tr>
<td>Personal Injury &amp; Workers Compensation</td>
<td>13</td>
</tr>
<tr>
<td>Time &amp; Costs for a Lawsuit</td>
<td>14</td>
</tr>
</tbody>
</table>
What is a Personal Injury Lawsuit?

If you are injured in an accident as a result of someone else’s carelessness, (other than an employer or fellow employee), you may have the right to seek monetary damages for injuries resulting from that accident. The injury does NOT have to be work-related. Some examples of accidents include:

- Motor vehicle collisions
- Dog bites
- Slip (or trip) and fall
- Pedestrians struck down by a motor vehicle
- Construction sites
- Defective or unsafe products

*NOTE:* Work-related accidents are covered under the NYS Workers’ Compensation Law, regarding claims against the employer or fellow employee.

Why should I file a Personal Injury lawsuit if I have been injured?

If you have been the victim of an accident and have suffered serious injury, there is no way to predict how that injury will affect your future. What if you become unable to work? What if your medical needs exceed what your personal health insurance will pay? What if you need long term care or special equipment? If someone is liable for your injuries, you have the right to a monetary recovery. The amount of your recovery will either be negotiated with the insurance company or ultimately determined by a jury at a trial. This money will help defray unanticipated costs in the future, and help you continue with your life.
How much money could my case be worth?

At the beginning of a personal injury claim, no one can answer that question. There are too many unknowns such as:

- The results of investigations.
- The length of time the disability will last.
- The amount of the defendant’s insurance coverage.
- The full extent of your physical injuries.
- The full extent of your lost wages and medical expenses.
- The judge who will hear your case.

When your attorney receives a settlement, you will be advised. If your attorney believes you are not likely to get more money by going forward in your lawsuit, a settlement will be recommended. You do not have to accept this recommendation.

What is necessary for a Personal Injury lawsuit to be successful?

There are two important elements needed for a successful lawsuit: “liability” and “related injuries”.

Liability = Fault

It must be proven that you were injured as a result of someone else’s carelessness. If the person or company that caused your accident failed to act as a reasonable person or company would have in the same situation, then he or she acted negligently. However, the law requires more than simple negligence to succeed. The accident must be foreseeable. When someone acts negligently and it is foreseeable that the accident might occur, then you can seek money damages for qualifying injuries that were caused by the accident.
Related Injuries

Insurance companies are responsible to pay money only for injuries that were caused by negligent parties whom they insure. If the person who caused the accident was negligent, but you did not sustain any damages or injuries, then the insurance company is not responsible for paying anything. However, if you have sustained damages and injuries caused by the accident, then the insurance company is responsible for paying for those damages, up to the policy limits that the negligent party had in place on the day of the accident.

It is important for you to document your injury so your attorney can provide evidence of your injury to the insurance company. If your injury created any scars, you should take periodic photos of your scarring. The medical evidence the attorney will use to support your case will be your treating doctor's medical records and reports. It is important that your medical doctors know the full extent of the injury you sustained and how it has changed your life.

If you have had a prior injury or condition that is similar to the injury you sustained in an accident, you must advise your attorney. If you fail to advise of a prior injury or condition, the attorney will not be able to properly represent and counsel you, and the value of your case may be adversely affected.
Types of Personal Injury Lawsuits

Motor Vehicle Accident Case: In order for a claim or lawsuit to be successful, it must first be shown that the other party acted negligently. It must be shown that a driver (other than you) in at least one of the vehicles in the accident failed to drive in a reasonable manner and the failure to do so caused the accident. There can be more than one cause of the accident.

To Sue, a “Serious Injury” is Required

By law, only those people who have suffered a “serious injury” in an motor vehicle accident are permitted to get money as compensation for their pain and suffering. A lawsuit can only be sustained if you have a serious injury. The New York State Insurance Law requires that you must suffer at least one of the following serious injuries as a result of the motor vehicle accident to qualify for a monetary award for your pain and suffering:

- Death
- Dismemberment
- Significant disfigurement (or significant scar)
- Fracture of a bone
- Loss of a fetus
- Permanent loss of use of a body organ, member, function or system
- Permanent consequential limitation of use of a body organ or member
- Significant limitation of use of a body function or system
- Any medically determined injury or impairment which renders you unable to do your normal daily activities for any 90 out of the first 180 days following the accident.
The courts require that these injuries be proven by positive objective tests (MRI, CT Scan, x-ray, or some other medically recognized test). In addition, a medical doctor, who is willing to testify in court on your behalf, must relate the positive objective tests to the injury you sustained in the accident. A lawsuit cannot continue to a favorable conclusion on your behalf if your injury is not supported by a positive objective test, or if a medical doctor does not state within 18 months from your car accident that the positive objective test result is from the accident.

**Pedestrian Knockdown Case:** Again, in order for a claim to be successful, it must be shown that someone (other than you) acted negligently. It must be shown that the person driving the vehicle that struck you drove that vehicle carelessly, and as a result of that carelessness, caused your injury. In addition, the pedestrian’s actions will be considered in determining fault. Even if you were in part responsible for the accident, you can still recover for your injuries. However, you may only recover to the degree which the driver of the vehicle caused the accident. For example, if it is determined that the driver was 80% at fault and you contributed 20% to the happening of the accident, you can recover 80% of the value of your related injuries.

**Construction Accident Case:** Construction accident law is usually governed by the Labor Law of New York State. This is a very complex area of law. Here is some of the basic information which must be proven for a successful construction personal injury case:

1. The work being performed was agreed to by contract. Generally, a written contract which details the work to be performed exists between the owner, general
contractor, construction manager and sub-contractor. In addition, these contracts set forth who is responsible for purchasing insurance for injuries which occur on the job site.

2. Who is responsible depends on how the accident occurred.

The Scaffold Law, Section 240(1) of the New York State Labor Law makes the owners and general contractors responsible for injuries in certain cases. Section 240 provides:

"All contractors and owners and their agents, except owners of one and two-family dwellings, who contract for but do not direct or control the work, in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be constructed, placed and operated as to give proper protection to a person so employed".

If you were involved in any of the activities set forth above, the owner of the property will be responsible for your injury. Your actions are NOT a factor in a 240(1) case. Injuries which occur on floors, stairways, shaftways or by lifting apparatus are covered by Section 241(1-5) of the New York State Labor Law. Your actions are not a factor in a section 241(1-5) violations.

These construction accidents are unique in that the owner and general contractor may be liable to an injured person even though the injured person's own negligence was a significant or major cause of the accident. The reason for this is that the above-mentioned sections of the Labor
Law makes the owner and general contractor absolutely liable for violations of the law. This is done to protect persons working at these hazardous tasks. It should be noted that the Labor Law now requires a "grave injury" to impose absolute liability upon the owner and general contractor. You should consult an attorney to learn whether a particular injury may constitute a "grave injury".

**Dog Bite Case:** Victims of an attack by a dog must prove the animal had "vicious propensities" and the owner of the dog knew or should have known the dog was vicious. If the dog has bitten someone before, the dog will generally be considered vicious and the law presumes the owner had some knowledge of the dog's "vicious propensities". However, even if the dog has not bitten someone before, if the owner of the dog knew it had vicious or mischievous propensities, they may be found responsible for your injury. For example, if the dog is kept for protection and it's a "watch dog", the owner should know the dog has a propensity to bite. Additionally, if the dog that bit you showed his teeth, growled and charged people in the past, the dog may be found to be vicious and the owner responsible for your injuries. Also, certain breeds are known to be vicious.

**Slip (or Trip), and Fall Down Case:** In order for this type of case to be successful, it must be shown that someone (other than you) acted negligently. There are many laws governing slip (or trip) and fall down cases. Generally, property must be maintained in a reasonably safe condition. The party who is responsible for maintaining the property depends upon their relationship to the property. The owner of a property is generally responsible for maintenance of the property. However, the responsibility to maintain the property can be shifted to someone else by contract. For example, a tenant may
become responsible to maintain the property if a tenant’s lease provides that the tenant is responsible.

- **Notice is required.** In order to be successful, it must be shown that the party responsible for maintaining the property knew, or should have known, of the defective condition prior to the accident. This can be shown in a couple of ways:

  - **Actual notice.** If the party responsible for maintaining the property actually received written notice or was told about the defect, or was the one who created the condition and failed to fix it in a reasonable time, that party may be found responsible for your injury.

  - **Constructive notice.** If the defective condition that caused your fall existed for such a long period of time that the party responsible for maintaining the property should have known about it and failed to fix it in a reasonable time, then that party may be found responsible for your injury.

**Snow and Ice Fall Down Injuries:** Snow and ice cases have some special laws that limit the liability of the party responsible for clearing and sanding areas where snow and ice accumulate. Generally, the obligation to plow, salt or sand does not start until after the storm is over. Once it is over, the party responsible for maintenance has a reasonable time in which to plow, salt or sand. Once a party undertakes to plow, salt or sand, it must be done reasonably. There is no obligation to perfectly clear the snow and ice, only to do so reasonably.

**Products Liability Case:** Products liability law is a volatile area of law often involving complex litigation and expense. However, the devastating effect of an injury to
an individual caused by a defective product requires that
the manufacturer be held accountable for their dangerous
products. When a manufacturer or distributor places a
product into the marketplace to be used by the general
public, unfortunately accidents happen. If it can be
demonstrated that the product was defective and that the
defect was a substantial factor in causing your injuries,
you may be entitled to compensation.
Manufacturers and distributors are generally responsible
for three types of product defects:

- **Manufacturing defects.** A manufacturing defect is
  an imperfection in a particular product which causes the
  product to fail dangerously during its use. For example, a
car manufacturer who installs faulty brakes in one new
car will be responsible for the injuries caused by that
particular car’s brake failure.

- **Design defects.** A design defect may exist where
  a particular product, although manufactured exactly
  as intended, still poses an inherent danger to the user.
  Here, the manufacturer may be responsible for failing
to adopt a safer, alternative design. For example, a
properly manufactured silicone breast implant may
rupture because its design is flawed, or the automobile
manufactured exactly as intended may have a tendency
to roll over due to defective design.

- **Inadequate warnings.** Dangerous products should
  have warnings to the user. A manufacturer or distributor
  of a product who fails to adequately warn of particular
dangers that were known or knowable may be
responsible for the injuries caused by the product.
Are there specific time frames or statutes of limitations for filing personal injury cases?

Yes! Statutes of Limitations are restrictions placed on the time in which a lawsuit may be commenced. In other words, there are “deadlines for suing.” Because these time limitations vary according to the subject matter of the lawsuit and who is being sued, it is strongly advised that you consult an attorney promptly after sustaining injuries, regardless of who caused them or how. The attorney will help you to determine your rights, and you will learn about the applicable statute of limitations.

What are the steps of the lawsuit?

**Summons.** The summons gives notice to the people to be sued (the defendants) that you (the plaintiff) are making a legal claim against them. In the case where a governmental entity is a potential defendant, it may be necessary to serve a Notice of Claim upon that entity even before the summons is served.

**Complaint.** The “complaint” states, in a general way, how the accident happened, who was involved and where and when it happened. A claim for money must be included in the complaint. This amount does not indicate how much money you may get or how much your injuries are worth. A claim may be made for $1,000,000 to $5,000,000, but this amount only puts the defendant on notice that you are seeking money damages. It does not relate to how much money your case is worth. You or your spouse verify the accuracy of the complaint by signing it.

**Suing on Behalf of Your Spouse.** If you are married and living with your spouse both at the time of the accident
and the time the complaint is served, a claim for your spouse will be included, if you agree to this. This claim asks for damages that your spouse suffered as a result of your injury. Your spouse may be entitled to money damages for the loss of love, companionship, affection, society and sexual relations that results from your injury. However, if the case is settled, generally all of the money is for the injured person, and not for the spouse.

**Answer.** The defendant’s insurance company will hire a lawyer for the defendant and will respond to the complaint with an “answer.” In response to the claims made in the complaint, the defendant’s answer may admit some facts and deny some facts.

**Bill of Particulars.** After the defendant’s answer is received, your attorney will provide to the defendant’s lawyer a document called the “bill of particulars.” This describes in detail, how the accident happened; the injuries sustained in the accident; which doctors have been treating you and what their findings are; your occupation; how many days you missed from work; how much money in wages you lost; how much money your medical treatments have cost; and any other critical information related to your claim.

**Examination Before Trial.** At an “examination before trial” (EBT) or “oral deposition,” you will be asked questions, under oath, by the defendant’s insurance company lawyer. If you have called the CSEA Legal Services Program, you can obtain the services of an independent law firm that specializes in Personal Injury cases to represent you at every step. The defendant’s lawyer can ask only relevant questions about the accident and your injuries. Your lawyer will ask the defendant questions, under oath, about how the accident occurred. The EBT
is usually held at your attorney's offices or the defense attorney's office.

**Medical Exam.** The defendant's insurance company is permitted to hire a doctor, for purposes of trial, to examine you. This is also called the "independent medical examination" or "IME." However, there is nothing independent about it. The insurance doctor's purpose is to state, on the defendant's behalf, what injuries you sustained. Frequently, these doctors minimize your injuries. However, you must attend this exam. Your failure to attend can result in the judge dismissing your case. Your attorney relies upon your treating doctor to state the true severity of your injuries.

**Trial.** Generally, only 6% of cases are decided by a jury. Since it is not known which cases will settle before a trial, every case must be handled as if it will be one of the cases that a jury will decide. If you lose after trial, you will not be charged for legal services.

**What are some of the things needed to support a lawsuit?**

**Authorizations**

Determining your medical condition is a critical part of winning your case. All related medical records for all treatment you received related to your accident must be obtained by your attorney, as well as for treatment related to prior or subsequent similar conditions. In addition, the negligent party's insurance company is entitled to get all related medical records so they can evaluate your claims.

To allow your attorney and the negligent party's insurance company to get the necessary records, you must sign papers (authorizations) allowing the medical
care providers to release the records. All medical providers and employers require original, signed, notarized authorizations. As a result, you will sign many authorizations. Authorizations are valid for only **90 days**. Therefore, if your attorney has authorizations that are too old to use, you will be asked to sign additional authorizations. The following may require signed authorizations for records at various times during your case:

- Hospital(s)
- Internal Revenue Service
- Employer(s)
- Treating doctors and health care providers (current and prior)
- No-Fault Insurance Carrier
- School(s)
- Workers’ Compensation

**What if my personal injury occurred while I was working?**

If you were “in the course of your employment” at the time of your personal injury accident, you should apply for Workers’ Compensation benefits by filing a C-3 Form with the New York State Workers’ Compensation Board. When you call the CSEA Legal Services Program (1-800-342-4146) about your injury, you will be connected with an Case Appraisal Manager from the statewide law firm of Fine, Olin, and Anderman, LLP, who will take information. Your case will be reviewed for both Workers’ Compensation and a potential Personal Injury lawsuit. If you receive a monetary award for the Personal Injury lawsuit, you will have to partially reimburse the Workers’ Compensation insurance carrier out of the proceeds of your settlement. Your attorney will negotiate this reimbursement for you. Your case will be referred to the
appropriate attorney under the plan depending upon your Region and the circumstances of your accident or injury.

**How long will this case take?**

Attorneys generally do not control the length of this process. However, your attorney will not attempt to settle your case until he/she knows the full extent of your injuries. Once your doctors have the results from the necessary tests and have advised you of the full extent of your injuries from the accident, your attorney will try to settle your case by negotiating a settlement with the insurance company.

Unfortunately, insurance companies don’t always offer a fair settlement. When they do not, your attorney will start a lawsuit on your behalf. If a lawsuit is started, the time it takes to reach a conclusion will depend greatly upon the part of the State in which it is pending. However, your attorney will take advantage of every opportunity possible to settle your case fairly, quickly and without a trial.

**What will it cost me?**

*Retainer Agreement*

There is no legal fee payable under the CSEA Personal Injury Plan unless your attorney is successful in recovering money on your behalf. You will have a retainer agreement that explains this further. Please read your retainer agreement carefully. Your attorney is required to file a “retainer statement” with the New York State Office of Court Administration indicating that his/her law firm is representing you. If the case is favorably resolved, your attorney usually receives 1/3 of the net settlement as its fee.
Disbursements and Expenses
Disbursements and expenses are monies your attorney’s law firm will pay on your behalf during your case in order to advance your claim. At the end of the case the law firm is reimbursed by deducting these costs from the gross settlement. By doing so, you do not have to pay your disbursements out of your own pocket ahead of time.