

# The Injury Disability Law Letter

Brought to you by Spencer & Spencer, Attorneys at Law

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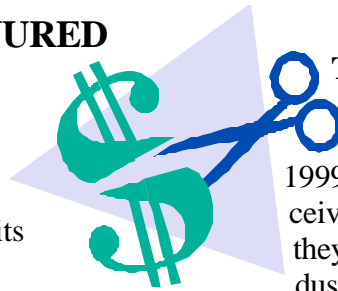
## COURT OF APPEALS CUTS INJURED WORKERS' BENEFITS

2003 was a bad year for injured workers in Colorado. Two decisions from the Court of Appeals have significantly cut the benefits available for lost wages.

### The Midboe Case

In a case decided September, 2003, the Court of Appeals changed the way health insurance was factored into wage-loss benefits. When you are out of work due to an injury, you are paid temporary disability benefits. The amount you are paid depends on your "average weekly wage." Until now, the value of your health insurance was included when calculating your average weekly wage.

Now that's all changed. Until this decision was issued, you were compensated for the loss of health insurance whether or not you took COBRA. Now, unless you continue to pay for health insurance you will not be compensated for it. This can have a significant impact on you if you are trying to survive on workers' comp. benefits, which are 2/3 of your wages. This is just one more example of how uncaring Colorado's workers' comp. system is.



### The Longmont Toyota Case

The second major case interprets a 1999 law that prevents workers from receiving compensation for lost wages if they quit or are fired for "cause." The Industrial Claim Appeals Office had previously ruled that even if a worker was responsible for the loss of their employment, they could still receive lost-wages benefits if the injury worsened in the future and prevented them from working.

The Court of Appeals reversed that ruling in the *Longmont Toyota* case. The Court of Appeals said that termination for cause (whether you quit or were fired) **permanently** disqualifies an injured worker from **all** wage-loss benefits.

To understand how this works, consider the following example. Let's say that you have hurt your back at work, and you are released to modified duty. You are later fired or quit. Under the 1999 law, you cannot receive any lost wages. But your back gets worse, and you need surgery. Before the *Longmont Toyota* case, you would be compensated while you had surgery and recovered from it. But *Longmont Toyota* eliminates your benefits completely, regardless of whether or not your condition worsens. (cont. on p. 2)

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#### What's On the Inside...

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Social Security disability and student loans  
What is the difference between SSDI & SSI benefits?  
Web Picks: The Arthritis Society  
Unemployment and Social Security  
New ruling on Reflex Sympathetic Dystrophy Syndrome

(cont.)

The *Longmont Toyota* decision is currently being appealed to the Colorado Supreme Court, in hopes of overturning it.

If you're as outraged as we are by decisions like these, we urge you to call or write your state senator or representative. The only way to change the law is to convince your legislators that it is wrong.

🗉 Not sure who your Colorado state representative or senator is? Find out on the web at <http://www.vote-smart.org/index.htm> or contact Project Vote Smart at 1888-VOTE-SMART. 🗉



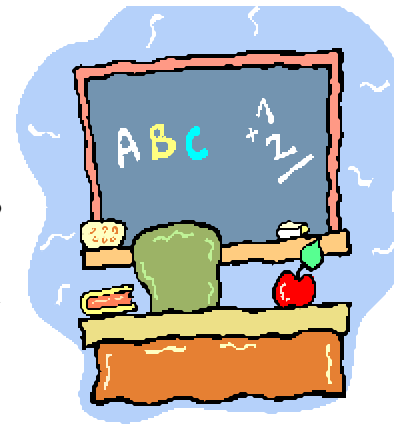
## SOCIAL SECURITY DISABILITY AND STUDENT LOANS

Your SSDI benefits can be garnished if you have outstanding student loans. The first \$750 of your monthly benefits is protected and the total amount recouped cannot exceed 15% of your monthly benefits. Keep in mind that this does not apply to SSI benefits.

You can ask the Department of Education to discharge the loan based on "total and permanent disability." But be aware that the Department of Education's standard is more strict than Social Security's. You must be "unable to work and earn money because of an injury or illness that is expected to continue indefinitely or result in death." If your condition existed at the time that the loan was made, your discharge request will not be considered unless your condition has worsened over time. 🗉

Workers' Comp 101:

## WHAT BENEFITS AM I ENTITLED TO?



If you are injured in an accident at work, you naturally want to receive the maximum compensation that you are entitled to

under the law. Many people make the mistake of trusting the insurance company to determine the fair value of their claim. But the insurance company wants to limit the amount of money paid to you because this increases their profits.

If you miss more than three days of work due to your injury you are generally paid for the time you missed from work at the rate of two-thirds of your weekly wage. The insurance company is also responsible for paying the medical costs related to your injury. You are entitled to receive reimbursement for mileage to and from doctor's appointments and therapy sessions. If you were disfigured or physically scarred by your injury, you may also be entitled to disfigurement benefits.

When your doctor decides that your condition has stabilized, you will be at what is called "maximum medical improvement." At that point, you may be entitled to benefits for your permanent impairment. These benefits are determined by the impairment rating you receive.

Your doctor may determine that you have zero permanent impairment. It is difficult, but a zero rating can be overcome by an experienced attorney.

The only way to make sure that you are receiving full compensation for your injury is to have an experienced attorney evaluate your case for you. 🗉

"If there were no insurance companies, there would be no good lawyers." -Anonymous.

## SOCIAL SECURITY TERMS

WHAT IS THE DIFFERENCE BETWEEN SSDI & SSI BENEFITS?

### Social Security Disability Insurance Benefits:

- ? Also known as SSDI, DIB or Title 2 benefits.
- ? Financed primarily through employee and employer paid taxes.
- ? Amount of monthly benefit depends on your earnings.
- ? Paid to the worker and dependants when you retire, cannot work or if you die.
- ? Entitles you to Medicare benefits. You pay a monthly premium for Medicare benefits, just like other health insurance.

### Supplemental Security Income Benefits:

- ? Also known as SSI or Title 16 benefits.
- ? Paid for by general funds from the U.S. Treasury.
- ? Paid to you if you did not work or did not work long enough in jobs covered by Social Security.
- ? You must meet disability requirements and have minimal financial resources.
- ? Entitles you to Medicaid benefits, which is currently the only program that pays for medication.

The type of benefits you receive depends on several factors, including how much you have worked and whether you paid Social Security taxes. For SSDI benefits, your monthly benefit amount depends on how much you have earned over your lifetime.

Keep in mind that if you have a low SSDI monthly benefit, you can also qualify for SSI benefits and Medicaid. For example, the current monthly SSI amount for an individual is \$564 per month. If your monthly SSDI benefit is below that amount, and you meet the other financial requirements, you will be eligible for SSI benefits, bringing you up to the \$564 per month. You will also be eligible for both Medicaid and Medicare.



## WEB PICK

THE ARTHRITIS SOCIETY

URL: <http://www.arthritis.ca>

RATING: ? ? ? ? out of four



This Canadian research organization's focus is on informing the public and providing helpful information to arthritis sufferers. The site offers the latest news on clinical research in the medical community and tips on participating in experimental trials. There is general information about arthritis as well as a lot of information about specific types of arthritis. The site also features information about related conditions such as lupus, back pain, fibromyalgia, and lyme disease, to name a few.

The "Tips for Living Well" section has ideas that make living with arthritis more manageable. You can also take advantage of the online bulletin board, or read Dr. Stein's answers to visitor's questions. Dr. Stein has more than 25 years experience as a practicing rheumatologist, and the question and answer feature was developed so that people with arthritis would have a way to ask questions of a knowledgeable practitioner.

We liked this site for its ease of use and wealth of information. If you suffer from arthritis, you are bound to learn something new about your condition at this site!



## UNEMPLOYMENT AND DISABILITY

Social Security reported that nearly 200,000 people applied for disability benefits in October, 2003. This was up 20 percent from the previous month, and tied the highest ever application rate.

Disabled people are not counted in the unemployment numbers. If they were, the "official" unemployment rate would be much higher.

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### NEW RULING ON REFLEX SYMPATHETIC DYSTROPHY SYNDROME



SSA has issued a new ruling that explains its policies for evaluating Reflex Sympathetic Dystrophy Syndrome (RSDS), also known as Complex Regional Pain Syndrome (CRPS).

RSDS is a chronic pain syndrome affecting the sympathetic nervous system. It is most often caused by an injury to a leg or arm.

If you or someone you know suffers from RSDS, you may be interested in looking at the full text of the ruling. You can do so by visiting our website at:

<http://www.2spencers.com/news.htm>.

### LAWYER JOKES

What do you call a lawyer whose gone bad?

-Senator.

What do you have when 100 lawyers are buried up to their necks in sand?

-Not enough sand.

What do you get when you cross a lawyer with a librarian?



-All the information you need, but you can't understand a word of it.

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