

# *Now Hear This...*

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## **Workers' Compensation and Hearing Loss**

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Workers' compensation is the system we use to take care of men and women who are injured at work. It is a trade off. The worker receives benefits regardless of fault, but he or she only receives certain limited benefits.

To be covered under workers' compensation, a disability must "arise out of and in the course of" the employment. This means that the worker must be on the employer's premises and/or engaged in activities that further the interest of his or her employer.

In general it is said, "the employer takes the worker as it find him." We mean by this that work does not ordinarily have to be "the cause" of the disability. It is enough if the work contributes to, combines with, or aggravates a preexisting condition. Thus, if a worker were exposed to loud noise at work and was also exposed to noises, such as chainsaws or snowmobiles outside work, the questions would ordinarily be, "Did the work contribute to the hearing loss?" Under ordinary circumstances there is no weighing of the contribution. It is enough if the work contributed.

The exception to this principle is conditions of the aging process. Under those circumstances there is a weighing process and the work contribution must be "significant" in comparison with other factors.

Is hearing loss a "condition of the aging process?" the appellate courts have not decided this. Accordingly, it is decided on a case-by-case basis and health care providers are likely to be asked their opinion. The statute gives very little guidance. There is no definition of a condition of the aging process. The statute, however, does include one example, "heart and cardiovascular conditions." Expert witnesses should offer their best professional judgement on this issue.

Under Michigan law benefits are equal to eighty percent of the worker's take home pay up to certain maximum benefits. The maximum rate for 2000 was \$611.00.

Under workers' compensation, workers are entitled to unlimited medical care related to their disability. There are no co-pays or deductibles.

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To be eligible for wage-replacement benefits, the worker must meet the definition of disability by having some limitation in work suitable to his or her qualifications and training. The worker must also have a wage loss and the wage loss must be the result of the work related injury. If a worker refuses an offer of reasonable employment, benefits are suspended. This puts considerable pressure on employers to make accommodations and find work for injured individuals and puts pressure on the workers to accept such offers of work.

There is no time limit on benefits in Michigan. Potentially, a worker who met the criteria discussed above could receive wage loss benefits for the rest of his or her life. This rarely happens, however. In the vast majority of cases, the worker returns to work in ninety days or less. In more serious cases, some dispute often arises after benefits have been paid for a year or two. These disputed cases are most often settled through a "redemption." The worker receives a single lump sum payment and all liability for the employer is terminated.

If there are disputes concerning a workers' compensation claim, the employer or insurer usually terminates the payment of benefits. The worker then hires an attorney and requests a hearing. Hearings are held before Workers' Compensation Magistrates. There is an appeal to the Workers' Compensation Appellate Commission and, on issues of law, parties may seek permission or "leave" to appeal to the Court of Appeals and the Supreme Court.

Michigan law requires that all employers make some provision for the payment of workers' compensation benefits. This most often takes the form of purchasing a policy of workers' compensation insurance. Except for very small employers, these policies are experience rated. This means that the premiums for future years are based on the losses for past years. About 600 of the largest employers in Michigan have received permission to be self-insured.

In some cases self-insured employers administer their own claims. In other cases they hire a third party administrator to manage the claims.

About two-thirds of the cases that go through the Michigan workers' compensation system never involve any disputes or litigation. Even these cases, however, require informed input from treating physicians. Most likely, the input will be sought in the form of a request for a written report. The request will usually come from the employer or its insurance company or third party administrator.

If there is a dispute in the case, the opinion of treating physicians is likely to be sought from the attorneys involved in the case. Usually this will begin by a request for a written report. If it appears that the case will go to trial, the parties may arrange the deposition of the treating physician. This means that the parties will come to the doctor's office at a time convenient for the doctor and take his or her testimony as if they were in court. No judge is present during the deposition. Instead a court reporter records everything that is said and a transcript is typed up and handed to the judge at the time of trial.

In disputed cases, and sometimes in cases when there is no dispute, the parties may send the worker for a second opinion. These evaluations are usually referred to as "independent medical examinations." In some cases, insurance companies or employers use these routinely as a way to monitor the progress of a case. In other cases, these are used specifically to prepare for upcoming litigation.

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Hearing loss involves some unique questions. First of all, the physician or audiologist is likely to be asked whether the work caused or contributed to the hearing loss. It is generally accepted in the workers' compensation community that there are certain "patterns" of hearing loss, which are typical of noise induced hearing loss. Physicians and audiologists are likely to be asked whether a particular patient has such a pattern.

It is also quite possible that the claims managers or attorneys may provide you with a description of the noise exposures in the work environment and ask your opinion as to whether or not these could cause the hearing loss seen in a particular individual. It is extremely helpful to the workers' compensation system when you can provide such an opinion. If, however, you have not been provided with sufficient information to make such a judgement, you should not hesitate to say so.

Hearing loss provides some unique problems concerning the issue of disability in Michigan. Most states provide some specific compensation for workers who experience a work related hearing loss. Michigan, however, has no such provision. In order to receive compensation, a Michigan worker must prove that he or she is disabled as a result of the hearing loss.

A worker might prove this by showing that it is medically inadvisable for him or her to work in a noisy environment. If a worker has already suffered a substantial hearing loss and is at risk for total loss of his or her ability to hear, this may be considered sufficient evidence to prove that he or she is disabled from returning to a noisy environment.

The employer, however, may argue that if the worker uses sufficient hearing protection, any likelihood of future hearing loss can be greatly diminished. Workers sometimes respond that it is dangerous to work in certain environments without the ability to hear in order to be alerted to dangerous conditions. This can sometimes result in complicated legal debates about whether a worker with hearing loss is entitled to benefits. Physicians and audiologists would be well advised to stay clear of the legal debates but to simply offer their opinion as to the amount of hearing loss and the potential future dangers from continued exposure.

In most cases, the best possible outcome for both the worker and employer is to find some way for the worker to return to gainful employment without significant further danger to his or her hearing. If the healthcare professional can work with both the employer and worker to facilitate such a return to work, he or she will make an important contribution to the welfare of all concerned.

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## **Continuing Medical Education Course**

Are you interested in learning more about the Michigan Workers' Compensation System and the Healthcare Provider's role in that system?

In cooperation with Mr. Welch, we are considering setting up a one-half to full day Continuing Medical Education course.

If you might be interested in such a workshop, please call our toll free number 1-800-446-7805.

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## Michigan Law Requires the Reporting of Known or Suspected Occupational NIHL

Reporting can be done by:

**FAX** (517) 432-3606

**Telephone** 1-800-446-7805

**E-Mail** [Rosenman@msu.edu](mailto:Rosenman@msu.edu)

**Mail** MDCIS Occ. Health Division

PO Box 30649

Lansing, MI 48909-8149

### Suggested Criteria for Reporting Occupational NIHL

1. A history of significant exposure to noise at work; AND
2. A STS of 10dB or more in either ear at an average of 2000, 3000 & 4000 Hz.  
OR
3. A fixed loss.\*

\*Suggested definitions: a 25dB or greater loss in either ear at an average of: 500, 1000 & 2000 Hz; or 1000, 2000 & 3000 Hz; or 3000, 4000 & 6000 Hz; or a 15dB or greater loss in either ear at an average of 3000 & 4000 Hz.

***Now Hear This...***

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***Address service requested.***

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