

Furlough versus Layoffs and Your Workers' Compensation Rights

In the wake of the COVID-19 pandemic, Pennsylvanians have been subject to layoffs and indefinite furloughs in historic numbers. The difference between a furlough and a layoff is strictly one of employment relationship. In most instances, furloughed workers are still considered employees of their organization during the unpaid leave of absence whereas laid off workers are not. However, this distinction does not affect a workers eligibility to collect workers' compensation benefits.

Whether you are laid off or furloughed, your rights if you are collecting, were eligible to collect, or are eligible to start collecting are the same.

So what are those rights?

If you were hurt before the furlough, you may still have time to file a workers' compensation claim and receive medical treatment for the work-related injury. Under the Pennsylvania Workers' Compensation Act, notice is required with 120 days of the injury. Accordingly, if your work caused an injury, illness, or disease before the furlough, you may still have time to report the injury to your employer and qualify to receive workers' compensation benefits.

Additionally, if you were receiving workers' compensation benefits for an injury that took place while working for your Employer at the time of the furlough, you are entitled to continue to receive your wage loss benefits.

If you were only receiving medical benefits or partial wage loss benefits while you were working at the time of the

furlough, you may be eligible for a reinstatement of your full wage loss benefits. In Pennsylvania, when an injured employee returns to work, with restrictions, that is, does not return to his or her time-of-injury job, but rather to a modified position, and is subsequently laid off and petitions for the reinstatement of benefits, the injured employee is entitled to the presumption that his or her disability, i.e. loss of earning power, is causally related to the continuing work injury. *Klarich v. WCAB (RAC's Ass'n)*, 819 A.2d 626 (Pa. Cmwlth. 2003). Accordingly, if you were working with restrictions due to a work injury at the time of the furlough, you may be entitled to a reinstatement of wage loss benefits.

If you were working without restriction at the time of the furlough, you may still be eligible for a reinstatement of your workers' compensation benefits. In this instance, the injured worker has the burden to affirmatively establish that the work-related injury is causing his or her present loss of earnings. However, unlike where the injured worker was working with restrictions at the time of the furlough, in this case the injured worker is not entitled to the presumption that his or her present disability, i.e. loss of earnings, is causally related to that work injury. See [*Trumbull v. Workmen's Compensation Appeal Board \(Helen Mining Co.\)*, 683 A.2d 342 \(Pa. Cmwlth. 1996\)](#); [*Ogden Aviation Services v. Workmen's Compensation Appeal Board \(Harper\)*, 681 A.2d 864 \(Pa. Cmwlth. 1996\)](#).

It is unlikely that your employer will inform you of these rights to benefits. Therefore, we recommend that anyone who ever has had a work injury or disease consult with an experienced workers' compensation lawyer if he or she loses his or her job for any reason, especially in the event of a furlough, layoff, or plant closing.