



## **SPECIFIC INJURY, CUMULATIVE TRAUMA INJURY AND ANCILLARY INJURY**

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Workers' Compensation provides benefits to the worker that sustains a job related injury. The benefits can be medical care to cure or relieve the effects of the injury, compensation for time off of work, compensation for residual impairment that exists post maximum recovery period.

The common awareness is the two types of injuries that have to be proven as job related; a Specific and Cumulative Trauma injury. The more complex injury requiring additional development is the Ancillary Injuries.

The injuries that are occurring in the work situation require substantial documentation and the support of the treating doctor and/or the forensic doctor that is doing the evaluation.

This platform requires an expansion of understanding by the worker as to the various elements of the above-mentioned three types of injuries. This understanding must be factually correct and provided to the treating doctors and their staff so the substantial evidence platform is there that supports the injuries.

One of the major injuries that are not embraced by the employer is the Ancillary Injury. This injury expands the employer's liability to provide medical care to cure or relieve the effects of the injury. In addition it expands their liability for levels of permanent impairment they may emanate. For the worker, this understanding of all three types of injury and preparation provides a broader platform of protection for the worker and their family.

The physicians that are providing the medical care may be in an area of specialty and view the Ancillary body systems or Ancillary conditions subordinate to the medical care they are authorized to treat. Employers may not want to have to authorize other body systems and limit the treating doctor's medical care to ancillary problems. Examples of Ancillary Injury are where the medication, surgery or other forms of treatment of the job related condition causes harm and/or injury. Documentation of same is necessary. The worker must review all of his/her medications from <https://www.webmd.com/> and look at side effects of medications they are taking. If these side effects are there, this must be identified to their treater. This is another important area that the worker's attorney needs to help develop (Medical Care Can Expand <https://law1199.com/wp-content/uploads/2019/03/2019-issue-2.pdf>.)

The preparation of the worker, by his/her attorney, prior to the treatment and forensic evaluation are paramount factors that can create this platform of protection.

The Ancillary Injury is reviewed as to whether the original injury is a contributory factor to the Ancillary Injury, and if so this provides an additional platform of medical care to cure or relieve the effects of the injury.

A common example is where the worker sustains a unilateral problem either in the leg or arm, and over use of the other extremity that was not injured occurs. If compensating increases problems to other body parts that were not originally injured this then becomes a compensable consequence of the first injury, an Ancillary Injury.

We see this common in leg injuries, such as an injury to the right leg and the worker relies more upon the left leg, back and upper extremities to move and get around. As a result of such, these additional body parts become symptomatic and develop the need for medical care or residual impairment, or both. In this situation there is a compensable consequence, Ancillary Injury and the employer under the workers' compensation system becomes responsible.

The Ancillary Injury is one where the employer wants to limit themselves from. The physicians that are providing the care many times are there for the role to provide care, but not looking to the legal consequences of the Ancillary Injury.

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Another area besides the payment for disability to the injured worker that occurs can be the medical care. Medical care is to cure or relieve the effects of the injury and if the medical care causes further medical issues again, this is an Ancillary Injury.

This is an area where the employer and some medical providers are not going to jump forward to provide that coverage. The medical provider should acknowledge that there is a problem, but not necessarily come back and state it as a compensable consequence. The employer is not going to vet this out because it again creates a larger field of liability.

Unfortunately in many situations with industrial injury, particularly orthopedic injuries, there can be a significant weight gain. With the occurrence of weight gain, this can impact the heart system, pulmonary system and other body parts. The job injury can also make preexisting non work related medical conditions more problematic, such as diabetes. Even if there is a preexisting condition that existed prior to the job related injury if the condition becomes more problematic or more symptomatic because of the current job related injury, this becomes another factor in the compensable consequences of the injury. This is also an Ancillary Injury.

The workers awareness and discussion with the doctor is the foundation of evidence. The attorney that is representing the injured worker will be able to determine the potential for the Ancillary Injury and can help the worker focus on the proper communication with the medical providers to document same.

The workers' compensation system is one for protection of the worker. The workers' compensation system can raise the cost and liability to the employer. There can be employer views in conflict with the worker wanting to protect and secure medical care to cure and relieve the effects of the injury with the employer wanting to limit or eliminate costs. Knowledge is the key factor for the worker, and by the information garnered from the counsel, (the attorney for the worker), the worker is in a better position to protect themselves and their family for costs of medical care.

The employer is liable for any resulting disability or need for medical treatment arising from the job related injury or compensable consequence of same. One of the more telling cases that speaks to this is one litigated by this office, the *South Coast Framing, Inc. v Workers' Compensation Appeals Bd (Clark) (2015) 61 Cal.4<sup>th</sup> 291 [188 Cal. Rptr. 3d 46, 349 P.3d 141, 80 Cal.Comp.Cases 489]*. This was litigated by Daniel J. Palasciano of O'Mara & Hampton; a very significant case in workers' compensation that helps set forth the definition of a job related injury.



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**NOTICE:** Making a false or fraudulent Workers' Compensation claim is a felony subject to up to 5 years in prison or a fine of up to \$50,000 or double the value of the fraud, whichever is greater, or by both imprisonment and fine.

