

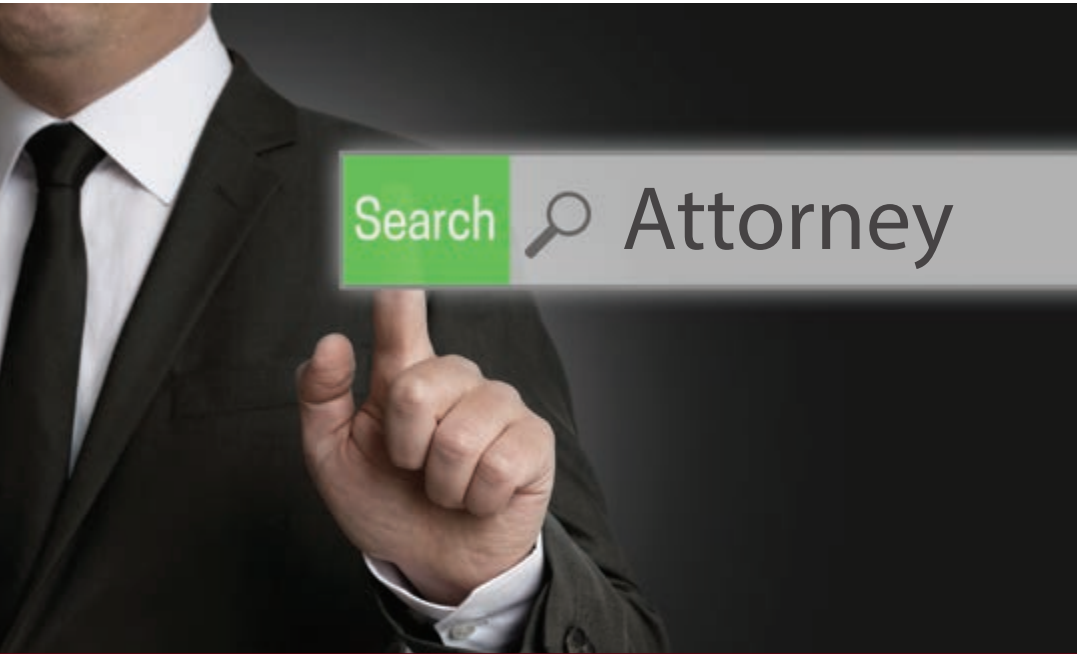
JPI

WORKING

Fighting for Workers' Rights

Winter 2019

for you



HOW TO CHOOSE THE RIGHT ATTORNEY

With almost 50,000 attorneys licensed to practice law in Pennsylvania, how should you decide which attorney is best suited to resolve your problem?

To get started, develop a list of potential candidates by talking to friends and co-workers who may have had a similar problem. Or consider talking to your union representative, or research online law firms that concentrate their practice in the same area as your claim.

Remember, lawyers are as specialized as doctors. You wouldn't ask your internist to perform open heart surgery. Likewise, you should not retain your uncle's divorce lawyer to litigate your personal injury or workers' compensation claim.

Make sure your attorney has the right experience. The length of time an attorney has worked in a particular area of the law is extremely important. The number of cases handled, the jurisdictions, and results are important criteria in assessing experience.

Experience in a particular area of the law gives an attorney knowledge of his adversary, as well as the judges presiding over your claim.

Expect your attorney to be a good communicator. Attorneys are paid to communicate with their adversaries and judges or juries. You should expect your attorney to exhibit professionalism. This means your attorney should work zealously to protect your interests, and return your phone calls or other inquiries promptly. You should expect your attorney to dress professionally, and project an image of success to reflect the fact your case is important.

Last but not least, you need to discuss fees and costs. Don't pick an attorney merely because they advertise that their fees are lower. If you listen only to law firms that advertise, you would think the concept of not paying UNLESS you win is unique. That's simply not true. Almost all law

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JUBELIRER, PASS & INTRIERI, P.C.
Attorneys-at-Law

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For more than 75 years, the attorneys of Jubelirer, Pass & Intrieri have served as trusted allies for those we represent.

- Labor and Employment Law
- Workers' Compensation
- Personal Injury
- Social Security Disability
- Estate Planning and Administration
- Driver's License and DUI Issues
- Civil Litigation

Jubelirer, Pass & Intrieri has served as legal counsel for more than 80 local and national labor organizations in various industries in both the public and private sectors. The lawyers at JPI have represented working people and their families in a variety of legal proceedings.

JPI has a well-established track record protecting and enforcing workers' rights. Our attorneys are honored to have been named among Pennsylvania Super Lawyers, Pittsburgh's Top-Rated Lawyers, and Best Lawyers in America.

JPI has been designated as a Top-Tier Law Firm by *U.S. News & World Report*.

Let us serve you and your family.





ACT 111 BRINGS BACK IMPAIRMENT RATING EVALUATIONS

Since 1996, employers and workers' compensation insurance carriers in Pennsylvania have been able to request an "impairment rating" of an injured worker, in order to determine the percentage of disability, and then place a 500-week cap on the injured worker's ongoing wage loss benefits.

This impairment rating evaluation ("IRE") system called for specifically designated physicians to perform these IREs—but only when the injured worker had already received two years of wage loss benefits due to the disabling injury. Under the system, the medical reviewer would perform an examination in order to determine an injured worker's "impairment rating" based on a percentage system that was set forth within the American Medical Association ("AMA") guidelines. If it was determined that the injured worker's impairment rating was less than 50%, the employer could automatically cap wage loss benefits at 500 weeks.

The IRE procedure and the percentage assignment method came under fire from attorneys representing injured workers. The attorneys argued that the AMA guidelines were too severe for measuring the level of an injured worker's disability. They also argued that, by deferring to an AMA publication for guidance on the recovery of wage loss benefits for an injured worker, the Workers' Compensation Bureau

was improperly giving legislative authority to a non-governmental body (the AMA). In 2017, the Pennsylvania Supreme Court decided in *Protz v. WCAB (Derry Area School District)*, that the IRE system was unconstitutional. In its decision, the Supreme Court concluded that the AMA should not be relied upon for setting impairment rating guidelines or standards.

Within months of the *Protz* decision, a group of state legislators began discussing and drafting a proposed bill that would overturn the decision, and revive the IRE process. The new IRE bill was finalized in the fall of 2018, and then signed by Governor Wolf. With the Governor's signature on "Act 111," the IRE aspect of the Pennsylvania Workers' Compensation Act has been reinstated.

Act 111 does not simply reenact the old IRE law which was declared unconstitutional by the Supreme Court. Indeed, since the Court already spoke on that issue, the legislature could not have done so. Rather, the legislature attempted to cure the defect in the old IRE law by having

future IREs performed based on the AMA "Guides to the Evaluation of Permanent Impairment," Sixth Edition.

The only positive coming from Act 111 is that the threshold to retain total disability status has been decreased from the ridiculously high 50% down to the only moderately ridiculous 35% level. This still requires a far higher standard than would realistically reflect a person who is truly totally disabled.

There are many questions regarding the application of Act 111. Employers who have injured workers who have received full wage loss benefits for two years or more will probably act immediately and start the IRE process.

If you are receiving workers' compensation benefits and you have received notification about an IRE request, please contact us immediately.

For more information about JPI, go to jpilaw.com/about-jpi/practice-overview.html

SETTLING YOUR WORKERS' COMPENSATION CASE

If you have a workers' compensation claim, the insurance company will likely approach you about a settlement at some point in time. Sometimes, a settlement is in a worker's best interest. For example, you might want to accept a fair lump sum in order to avoid having to fight your case in court. However, before you settle your claim, you should understand what rights you are giving up.

In Pennsylvania, workers' compensation settlements are formally referred to as "Compromise and Release Agreements." When you settle your claim, you typically give up your rights to all future workers' compensation benefits in exchange for a sum of money. Most settlements are paid in a lump sum, however, the insurance company might request a structured settlement if you have catastrophic injuries and need long-term care. A structured settlement is paid over time and, depending on

the terms of your structured settlement, you may receive payments each month, annually, or every few years.

Once an agreement has been reached between you and the insurance company, a Workers' Compensation Judge must approve the settlement. The Workers' Compensation Judge will schedule a hearing at which time your lawyer will present a series of settlement documents, including the Compromise and Release Agreement. Additionally, you will testify at the hearing which will include answering the Judge's questions about the terms of your settlement. If the Judge believes you understand what you are giving up and receiving in exchange, he or she will approve your settlement. Once the Judge approves your settlement, it is full and final. In other words, you cannot reopen your claim or demand additional benefits.



Every workers' compensation claim is different. For this reason, your claim's settlement value will depend on a series of factors, including your pre-injury wages, the severity of your injuries, your ability to return to work, and whether there is conflicting evidence in your claim. Generally speaking, claims where workers have higher wages, extensive medical bills, and strong supporting evidence have higher settlement values.

If the insurance company has approached you about a possible settlement, and you are unsure about what to do, please call us. As experienced workers' compensation lawyers, we can help you assess the benefits and risks so that you can make a decision that is best for you.

LABOR HISTORY:

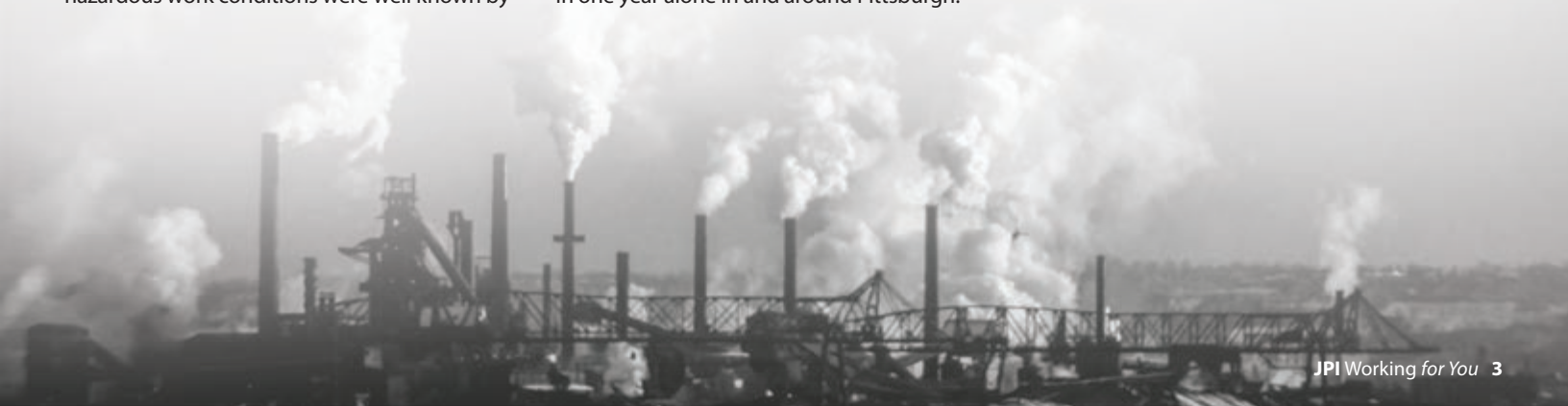
PITTSBURGH, CRYSTAL EASTMAN, and the BIRTH OF WORKERS' COMPENSATION LAW

In the early 1900s, Pittsburgh was an industrial powerhouse. The steel industry thrived and thousands of American-born and immigrant workers flocked to the city to work in the mills. The human cost of this progress and development, however, was steep. Constant billowing smoke clouds, industrial pollution, and soot around the city led one observer to describe Pittsburgh as "hell with the lid taken off." The working conditions in the mills and factories were notoriously dangerous and serious accidents, severe injury, and even death were an ever-present concern for workers. These hazardous work conditions were well known by

the people who lived them every day. At that time, workers did not have many options if they suffered an injury on the job, oftentimes leaving their family impoverished. That is how it was until a group of investigators and photographers, including a young female lawyer named Crystal Eastman, studied industrial working conditions and published *The Pittsburgh Survey* in 1909.

The Pittsburgh Survey was a pioneering study of industrial conditions across several industries including railroads, steel, and coal mining, which documented a staggering 526 workplace deaths in one year alone in and around Pittsburgh.

The investigation shed light on the alarming magnitude of work-related deaths and injuries as well as the utter failure of employers to compensate injured workers or their families. As a direct result of Eastman's Pittsburgh Survey, Union advocacy, and public outrage, states began enacting workers' compensation laws to protect injured workers. Pennsylvania first passed its own Workers' Compensation Act in 1915, and, although the law has changed over the years, the work done by Crystal Eastman and her colleagues laid the groundwork for many of workers' compensation laws that survive to this day.



BEWARE OF DOG

A common premises liability claim involves injuries resulting from dog bites. The majority of seriously injured dog bite victims in the United States are children. Oftentimes, the owners of the dog that attacked the child are friends, family members or neighbors. This often makes jurors uncomfortable—people generally believe that families, friends and neighbors shouldn't sue each other.

Another problem that arises in this type of case is the fact that when a dog bites a child, often the only witnesses are other children. Child witnesses often forget the details of an event, or are susceptible to being manipulated by defense attorneys at trial. Obviously, the particular facts in each case are critical in obtaining a recovery.

In instances where a dog bursts through a gate and attacks a child who is not trespassing, the dog's owner cannot contend the victim provoked the attack.

In more difficult cases, expert testimony may be needed to demonstrate the difference between offensive and defensive aggression. An expert can explain to the jury the dynamics of the attack, including the type, depth, location and number of bite wounds. When a child provokes a dog by stepping on the dog's tail you would normally anticipate a single defensive bite. In such instances the dog simply wants to remove the threat and one quick bite usually removes the threat, and the dog displays no further aggression.



This scenario must be contrasted with instances where the victim's actions before the attack were not at all provocative. If the injury involves multiple wounds on different areas of the victim's body, or shaking where the dog bites fully with its upper and lower canines, resulting in opposing wound patterns, it demonstrates the dog's unwillingness to end the attack. Expert testimony can be used to demonstrate this was an extremely violent attack and indicative of the dog's aggression.

If you wish to discuss a claim for personal injuries attributable to premises liability or an automobile collision, please contact the attorneys at Jubelirer, Pass & Intrieri, P.C.



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firms that handle personal injury and workers' compensation cases utilize contingent fee arrangements.

Our fee arrangements expressly state you will not be charged a fee, or costs, unless there is a recovery. In addition, JPI charges a 25% contingency fee in personal injury claims. In workers' compensation cases, after a favorable award, attorney's fees are deducted from the claimant's past and future compensation. Some law firms receive fees from a claimant's future compensation that go on indefinitely. JPI limits the duration to 24 months. Also, in lump sum settlements, our fee is 15%.

Attorney's fees are important—but should never be the only basis for selecting an attorney. Results are more important. Interview more than one attorney. Ask questions—make sure the law firm you select has the experience, professionalism, and results your case deserves.

Last but not least, you need to discuss fees and costs. Don't pick an attorney merely because they advertise that their fees are lower.

