

Can Workers' Compensation Reduce My Chances of Receiving SSDI?

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At Saffren and Weinberg, Marc Alan Weinberg, Attorney and Kenneth Scott Saffren, Attorney are partners. The firm's tagline is "The People's Voice In Court." They make themselves available via phone at (215) 576-0100 or by email on the Saffren and Weinberg website. Saffren and Weinberg provides a no-charge, complimentary case review and answers questions for prospective clients.



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It's important for people to understand how workers' comp may reduce social security."

Kenneth Saffren, Esq.

[Workers' Compensation Benefits](#) (unlike Private benefits) may Reduce Social Security

Many individuals receive disability payments from sources outside of government (therefore private). Pensions and insurance payments have no effect on Social Security disability payments (you can read our separate article on your Social Security Disability Insurance). On the other

hand, workers' compensation health insurance benefits (along with almost every other kind of government-run disability payments) may reduce an individual's Social Security monthly payments. Please read our article on having an advocate on your side to make a disability claim.

Any public disability benefits that are paid by the local, state, or federal government may affect an individual's Social Security payments if the reason for the benefit is not job-related. For example, employees who retire and draw retirement based on disability, civil service disability payments, and state temporary disability benefits.

If an individual receives workers' compensation or another disability benefits from a public agency and Social Security Disability benefits, then the total amount cannot be more than 80 percent of that individual's average earnings before the disability.

However, if an individual receives Social Security benefits for a disability and one of the following types of benefits, then that person's Social Security payments won't be reduced:

Benefits from the Veterans Administration;
Local and state benefits, (if Social Security taxes were deducted from your earnings); or
Supplemental Security Income (SSI).
How Much of a Reduction?

The Social Security Administration adds together the amounts a person receives for Social Security Disability, workers' compensation, and/or another public disability benefit. If that amount is more than 80 percent of that individual's average income at the time of the disability, then that excess amount will be subtracted from the individual's Social Security benefit.

As an example, if an individual (pre-disability) were earning \$1,000 per month, then that individual, the individual's spouse, and individual's dependents would receive a total amount of \$800 per month. This \$800 can be made up of Social Security benefits AND workers' compensation benefits, but must not exceed 80 percent of that individual's pre-disability income.

It is the Social Security benefit that is reduced until the total amount of public disability the individual receives is 80 percent of their pre-disability earnings. However, if the other benefit stops, then Social Security will no longer be reduced. Also, once an individual reaches full retirement age (65-years-old), then the reduction will end.

Pre-disability Average Earnings Formula

There are several different ways to calculate the average earnings for someone who has been disabled. The Social Security Administration can help an individual determine which formula will be used in their particular circumstances. Contact them at the Social Security Administration website.

Average Current Earnings Calculations

When the Social Security Administration goes to figure out an individual's average current earnings, they use one of three different formulas:

High-One: During the previous 5 years of employment the single highest paid year's average monthly earnings;

High-Five: The Social Security Administration finds an individual's highest earnings for five consecutive years and uses the average monthly earnings from that time period;

Average Monthly Wage: The administration looks at an individual's average monthly wages over the course of their work-life.

The Social Security Administration will use the formula that is most advantageous to the individual. This means that the High One formula is used the majority of the time. Whichever formula is used, if the total of an individual's monthly Social Security payment and workers' compensation benefit is higher than 80 percent of that individual's average current earnings, then an offset will apply.

Offset Amount Minimization

The workers' compensation offset rules allow an individual to minimize a number of payments that are considered in the formula. The following is a list of ways to allow an individual to keep more of their benefits.

Certain Expenses can be Excluded

The Social Security Administration subtracts certain expenses before they calculate an individual's workers' compensation settlement amount. Examples of these expenses are rehabilitation fees, dependent support payments, legal fees, and medical expenses (both past and future). Of course, the Social Security Administration requires supporting documentation of all of these expenses. If an individual is Medicare eligible and sets aside a very large amount of the settlement for future medical expenses, Medicare requires that those funds are exhausted before benefit payments start. For more on receiving Medicare benefits with a disability, read

our separate article.

Lump-Sum Payments

Sometimes someone who is hurt on the job will receive a workers' compensation settlement in a lump-sum. When this happens, many individuals look for a way to reduce a Social Security offset. One way to accomplish this is to ensure that the settlement agreement stipulates that the lump-sum amount is spread out over the rest of the worker's life. This usually decreases the offset enormously, and in some cases, eliminates it completely.

To have the Social Security Administration recognize that the lump-sum payment is to be spread out over the worker's life, language to that effect must appear in the original settlement agreement (it cannot be added later). Some federal courts have found that these lump-sum workers' compensation settlements cannot be spread out over an entire life. The courts have decided that the lump sum must be limited to the claimant's working life. The work injury lawyer simply drafts the settlement documents to prorate the settlement until the disability claimant reaches the age of retirement. Annuities have also been used to the disability claimant's advantage. However, if the settlement provides for an option to take a lump sum, then the Social Security Administration will use the amount of the monthly annuity payment in the formula to figure the offset.

It's important to understand that lump-sum payments of past due benefits in workers' comp are not the same as a lump-sum settlement. A settlement releases the employer (or insurance carrier) from future liability and all future benefit payments. If the payment is merely a payment of past-due benefits, the employer (or insurance carrier) must continue to make timely payments after the lump sum is paid. If no settlement can be reached with the workers' compensation insurance company, then the case will go to trial. At trial, the judge will usually not provide the claimant with spreading the benefit over the claimant's lifetime.

The Shift to Social Security Retirement Benefits

Many people say that everything changes at age 65. This is true for a lot of reasons. One thing that changes is that an individual receiving workers' compensation no longer has to deal with an offset once they are receiving Social Security retirement benefits. Also, recipients who are 62 (or are going to be soon) may be able to apply for early retirement to stop the workers' compensation offset. This will, of course, lower payments from Social Security each month over an individual's lifetime, so an attorney with a thorough knowledge of workers' compensation facts, Social Security law, and the Social Security Administration should be consulted. Read this related information on injured workers applying for disability benefits.

At [Saffren & Weinberg](#), we dedicate ourselves to representing clients who have to navigate the complex world of Social Security claims, disability claims, and workers' compensation claims. To speak with a member of our experienced legal team, Contact us at (215) 576-0100.

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Ken Saffren, Esq, is a partner of Saffren & Weinberg located in Jenkintown, PA, practicing in workers' compensation, social security, and personal injury litigation. He is a member of both the United States District Court of New Jersey and Eastern District of Pennsylvania Supreme Court, as well as PHN Epsilon Roe.

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