



What on Earth is a Workers' Compensation Offset?

One in an Educational Series from Oxner Thomas + Permar, pllc

If you know what we're talking about then you've been down a long road already. For the rest of you, let us explain what we mean, and what the answer to that question is.

Most everyone knows something about Social Security. It's what we're going to get when we get a bit older and retire. That's the Social Security retirement benefits that the people in Washington, D.C. are always arguing about. But there is also Social Security Disability (SSD) which could be invaluable to you if you have a serious workers compensation injury.

There are a series of steps in determining if you are "disabled" under Social Security Administration (the SSA) standards (which differ considerably from the workers comp standards). First, you must be out of work. Second, your disability must be "severe" meaning it interferes with basic work-related activities. Third, is your disability on the SSA's list of severe medical conditions? If it isn't then your condition must be at least as severe as one on their list. Basically it must be severe enough to keep you out of work entirely for one year or more. Fourth, you must be unable to do any of your former jobs. Fifth, in light of your medical conditions and your age, education, work experience, and transferable skills are there any jobs which you could perform.

The process of determining if you qualify for SSD is usually achingly slow. The first application is almost always turned down. For that reason we tell people to apply immediately after going out of work and not to wait until they've been out for a full year even though that's the standard for approval of the claim. As soon as the application is denied you should seek a reconsideration. This second round will also probably result in a denial. If it is, you should then seek a hearing before a Social Security Administrative Law Judge. In our experience it is at this stage that our clients have the best chance of winning.

The process described in the last couple of paragraphs will usually take at least a year and you'll have been out of work for just about all of it. That's why we said if you know about offsets then you've already been down a long road. Fortunately when you won your claim you should have been paid retroactively – thus you didn't lose out on the benefits while working your way through the Social Security System.

The amount of benefits varies but the following table can help you estimate what your monthly disability benefit would be:

| Age | Annual Pay | | | | | | |
|---------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| | \$20,000.00 | \$25,000.00 | \$30,000.00 | \$35,000.00 | \$40,000.00 | \$45,000.00 | \$50,000.00 |
| 25 | \$ 873.00 | \$ 992.00 | \$ 1,112.00 | \$ 1,232.00 | \$ 1,351.00 | \$ 1,471.00 | \$ 1,591.00 |
| 30 | \$ 851.00 | \$ 964.00 | \$ 1,079.00 | \$ 1,194.00 | \$ 1,308.00 | \$ 1,422.00 | \$ 1,536.00 |
| 35 | \$ 833.00 | \$ 942.00 | \$ 1,052.00 | \$ 1,162.00 | \$ 1,271.00 | \$ 1,381.00 | \$ 1,491.00 |
| 40 | \$ 816.00 | \$ 921.00 | \$1,027.00 | \$ 1,133.00 | \$ 1,238.00 | \$ 1,344.00 | \$ 1,449.00 |
| 45 | \$ 800.00 | \$ 902.00 | \$1,003.00 | \$ 1,105.00 | \$ 1,206.00 | \$ 1,308.00 | \$ 1,410.00 |
| 50 | \$ 785.00 | \$ 883.00 | \$ 981.00 | \$ 1,079.00 | \$ 1,177.00 | \$ 1,275.00 | \$ 1,373.00 |
| 55 | \$ 768.00 | \$ 861.00 | \$ 955.00 | \$ 1,049.00 | \$ 1,142.00 | \$ 1,235.00 | \$ 1,329.00 |
| 60 | \$ 752.00 | \$ 841.00 | \$ 930.00 | \$ 1,020.00 | \$ 1,109.00 | \$ 1,198.00 | \$ 1,288.00 |
| Monthly Payments effective 2007 | | | | | | | |

Let's look at the interaction of SSD and workers compensation. For example take a 40-year-old with an annual pay of \$30,000.00. If your pay is \$30,000.00 a year and if you're hurt at work then you would be entitled to around \$384.62 a week in workers compensation benefits. For SSD purposes there are 4.3 weeks in a month. Thus the monthly workers comp benefit would be \$1,653.85. If you added the disability benefit of \$1,027.00 our claimant would be receiving combined benefits of \$2,680.85 or an annual amount of \$32,170.15.

If you think that is too good to be true then you're thinking like the Federal Government. To prevent people from making more while they're injured than they ever did working, Congress put a cap on SSD when it is paid with workers compensation. The cap is set at 80% of the average of the last five years earning before the disability. To keep the math simple we'll assume that for the last 2.5 years of work our claimant made \$30,000.00. For the rest of the five years he made \$27,000.00. Thus the average annual pay over the preceding five years was \$28,500.00. Eighty percent of that amount is \$22,800.00 or \$1,900.00 monthly. Because the cap on combined benefits is \$1,900.00 the SSD will be "offset" by workers compensation so that the injured worker will receive his full \$1,653.85 from workers comp but only \$246.15 monthly from SSD.

Under such a scenario a smart workers compensation attorney will begin charging her client a 25% fee. Why? If the client pays a fee his monthly workers comp benefit drops to \$1,240.38 however the disability benefit will then increase to \$659.62 so that the injured worker continues to draw the combined benefit of \$1,900.00 monthly. Essentially the federal government pays the attorney's fee.

One last point to touch on involves the final settlement of the workers compensation claim. Again, an experienced attorney knows how to draft the settlement documents so that your SSD benefit increases to, or very close to, the full monthly benefit. Depending on the exact amount of the settlement in the example we've been using the disability benefits would likely increase to the full \$1,027.00. Thus by settling the workers compensation claim and taking a lump sum of money from the insurance company you can actually increase your SSD monthly benefits – if your attorney knows the techniques and tricks necessary to coordinate these two benefits.