



GINGERY HAMMER &  
SCHNEIDERMAN LLP

# CALIFORNIA

## Personal Injury Guide

Get The Most For Your Case



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# Personal Injury Guide

Getting injured can be stressful, painful and even life-changing in some cases. A personal injury can take place during almost any situation in one's life, whether it is at the workplace, hospital or while driving a car.

In many circumstances the accident could have been prevented. If you have suffered an accident or injury due to someone else's carelessness, you may choose to pursue compensation for your personal injury from those responsible for the harm.

There are many factors to consider when filing a personal injury claim. Standing up to a large corporation, employer or insurance company can seem complicated and daunting. It may also be difficult to get a sense of whether a lawsuit is merited. This guide provides answers to some frequently asked questions about personal injury lawsuits. However, it is best to consult an experienced and knowledgeable personal injury attorney, as each case is unique.

## PERSONAL INJURY CLAIMS IN AMERICA



And as a result,  
one lawsuit is filed  
every two seconds  
in the USA.

### Most Common Claims:



#### ROAD TRAFFIC ACCIDENTS

including drivers, cyclists & pedestrians



#### ASSAULT CLAIMS

over 2 million claimns reported in 2010



#### WORK RELATED INJURIES

over 3-million non-fatal work related injuries recorded in 2009 by the Bureau of Labor



#### PRODUCT LIABILITY CLAIMS

around 20 thousand claims filled every year, which makes up about 7% of all personal injury claims.

Some common types of personal injuries are:

**Motor vehicle accidents** involving cars, trucks, motorcycles, bicycles or pedestrians. One can be injured as either a driver, passenger or pedestrian in a crash due to a number of reasons, whether it is distracted driving or bad weather.

**Medical malpractice** in which the negligence of hospitals, doctors, nurses and other medical professionals leads to serious injuries. There are many different types of medical malpractice, including birth injuries, misdiagnosis, surgical errors and pharmacy mistakes.



**Premises liability** in the form of slip-and-fall accidents caused by dangerous conditions on someone else's property. Such accidents can occur anywhere from commercial properties] such as restaurants and retail stores to public swimming pools and parking lots. A number of hazardous conditions can give rise to slip-and-fall accidents, such as slippery floors, missing handrails and obstacles in a walkway.



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**Faulty or dangerous products** can cause considerable harm. Examples include defective medical devices and vehicles, harmful drugs and toxic food items, among others. Those who have designed, manufactured or marketed such products can be held responsible.

**Wrongful death lawsuits** can arise if a person is killed due to someone else's carelessness. Fatal motor vehicle crashes, medical malpractice, nursing home neglect or the use of a defective product can lead to wrongful death. Wrongful deaths are also a type of personal injury lawsuit. Damages awarded for such cases are different from those for nonfatal personal injuries.



# Do I Have A Case?

If you or a loved one has been injured due to someone else's carelessness or wrongdoing, you may be wondering whether you have a personal injury claim. However, simply being injured is not enough grounds to file a lawsuit.

Negligence is a key factor when establishing fault for an accident or harm in personal injury claims. In order to have a case, one must demonstrate that the responsible party was negligent in failing to meet the required level of reasonable care, the negligence caused the personal injury and the injury resulted in harm that would merit compensation.

The first step in proving a person or entity's negligence is establishing they had a duty of care in the circumstances that caused the injury. If the person or entity is at fault, it means they failed in their duty to keep you safe from harm. For example, a business owner is legally obligated to keep the premises free from hazards and to remedy dangers upon becoming aware of them, while a physician is responsible for providing patients with the level of care expected from a reasonably competent health care provider. Negligence can be viewed as a breach of this duty of care. However, the duty of care is not always explicit.

For example, drivers commit to the responsibility of keeping their passengers safe simply by getting behind the wheel.



Once the breach of contract is established, the victim must show that they suffered genuine injuries as a result of the defendant's actions or failure to act.

After establishing the duty of care, the personal injury victim – referred to as the plaintiff – must demonstrate exactly how the defendant's conduct failed to meet that standard of care. Once the breach of contract is established, the victim must show that they suffered genuine injuries as a result of the defendant's actions or failure to act. Physical injuries are generally easier to prove, but mental and emotional harm can be just as damaging and worthy of a claim.

An employer, business, hospital, organization, other public entity or even a combination of these can be sued if multiple parties are deemed to be responsible for the injury. Besides all of the above circumstances, true accidents can still occur due to uncontrollable circumstances. In such cases, the person or entity that harmed you cannot be held liable if they fulfilled their duty of care.

A qualified personal injury attorney can evaluate the details of a particular case to help decide whether there are grounds for a claim and whether pursuing a lawsuit is the best course of action.





# How Much Is My Case Worth?

Many factors affect the settlement amount of a case. Early in the case, it may be difficult to predict the amount of lost wages, total cost of medical care or the long-term impact of an injury. As every person and injury is different, the financial, physical and emotional effects of each injury will vary.



personal injury victim can receive compensatory damages and punitive damages. Both have limits on the amount that can be awarded.

Compensatory damages are awarded for any financial losses experienced because of the injuries. These can include medical bills, the cost of future medical treatment, current and future lost wages due to being unable to work and compensation for pain and suffering for mental and physical trauma due to the accident. Other damages such as disfigurement, loss of consortium, loss of enjoyment and future caretaking expenses are applicable depending on the nature of the injuries.

# WHAT PERCENTAGE OF LAWSUITS SETTLE BEFORE TRIAL?



**95 PERCENT**  
Of all pending lawsuits  
end in pre-trial settlement.



**90 PERCENT**  
Of trials are won in favor of the  
person who filed the suit.

**ONE in  
TWENTY**

**1 IN 20  
PERSONAL INJURY  
CASES GO TO COURT**

## AS A MATTER OF FACT

In fact, many people use this time to build a case that provokes their opponents into settling "for a favorable sum." Planning for a pre-trial settlement is crucial for any strategy.

**Punitive damages** refer to what is often a significant amount of money that is intended to punish the wrongdoer for their negligent behavior. They apply to cases in which the negligent party's conduct has been severely reprehensible. For example, a doctor performing the wrong surgery on purpose or a car company knowingly selling vehicles with faulty brakes rather than issuing a recall.

The amount and nature of damages depend on who is at fault for the injuries. If someone else is to blame, then the victim is entitled to receive all the compensatory damages. However, the amount of damages awarded is different if you were careless and partially at fault for the accident and your resulting injuries.

Although the law varies from state to state, typically each party's relative fault is assessed under comparative negligence. Damages are then awarded based on percentage of fault. Some states follow a system known as contributory negligence in which the plaintiff is unable to recover damages if they are found to be at fault for the accident to some degree.



In addition, when a person has suffered injuries due to someone else's carelessness, they are obligated to minimize the financial impact of their injuries by seeking prompt medical attention and following through with a recommended course of treatment. Failure to mitigate damages might result in a significantly reduced award.

Upon settling a personal injury lawsuit or pursuing it successfully through trial, the plaintiff will receive compensation proportionate to the harm that has already been suffered and in consideration of the future impact a long-term injury may have. The damages awarded depend on not only the physical severity of the injury, but also on how seriously it affects the person's life. For example, the impact of a broken ankle would be different for a basketball player's life than for a computer engineer.



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A damages award can be agreed upon after a negotiated settlement among the parties, their insurance companies and their attorneys, or may be ordered by a judge or jury after a court trial. A personal injury lawyer can realistically evaluate your case to determine what settlement would be fair or unfair.



# How Long Do I Have To File A Claim?

The period immediately after an accident or injury can be a confusing and emotional one. However, it is important to remember that time is a factor when pursuing a personal injury claim.



The timeframe a personal injury victim has in which to file a lawsuit is known as the statute of limitations.

The timeframe a personal injury victim has in which to file a lawsuit is known as the statute of limitations. Statutes of limitations govern the amount of time you have to sue after you become aware of the harm you have suffered. Sometimes the realization of an injury is immediate. However, in other cases years may pass before a person learns of the injury and its complete impact.

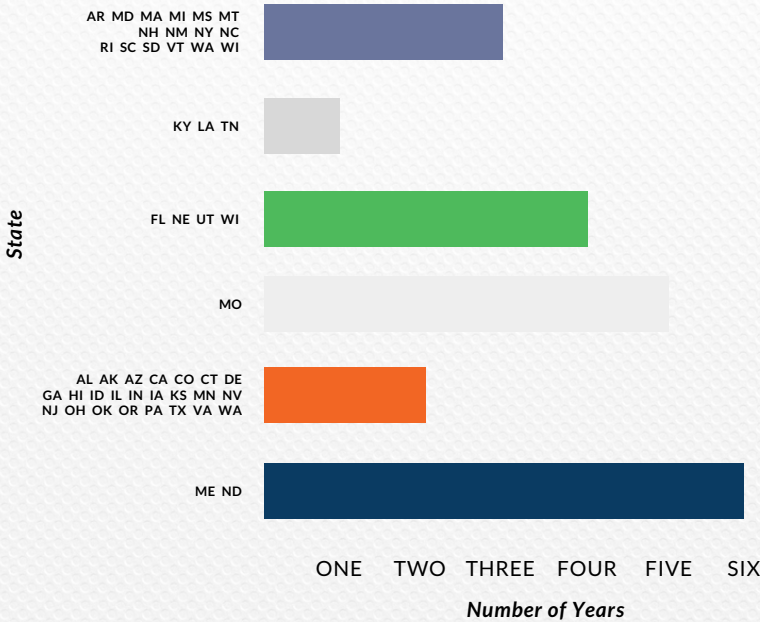
A claim is valid as long as it is filed within the given timeframe after a person learned about their injury. If the lawsuit is filed too late, it is no longer possible to sue and receive compensation for the injury. The statutes of limitations vary depending upon the type of personal injury claim, such as a slip-and-fall accident or medical malpractice. They also vary across different U.S. states.

Resolving a personal injury claim can be time consuming. Generally, it is wise to speak with an attorney as soon as possible after the injury, as that is when information and evidence will be the freshest. An experienced lawyer can help select the ideal time in which to file a lawsuit based on the nature of your injury before the statute of limitations expires.



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**Statute of Limitations in all 50 States  
on Personal Injuries**







# I've Decided to File My Claim ...Now What?

Once you decide to take legal action for your personal injury, your attorney will help you file the claim and guide you through the lawsuit process in order to obtain a fair damages award.

The length of your case is affected by a variety of factors such as the nature of your injury, the opposing insurance company's level of cooperation, the complexity of your case and whether it can be settled without a trial.



Most personal injury lawsuits do not go to trial. In general, straightforward cases can be decided in around six months.

Most personal injury lawsuits do not go to trial. In general, straightforward cases can be decided in around six months. For example, one party may admit fault in a car accident thereby, eliminating any cause for disputes. Personal injury lawsuits that are fairly complex - such as those involving medical malpractice, defective products and wrongful death - tend to require more time to resolve, especially if they go to trial.

# GETTING COMPENSATED:

## AN INTRODUCTION TO PERSONAL INJURY CLAIMS

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