



Legal Insurance



Personal Injury

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When someone is injured, the first question often asked is: "How did it happen?" The answer to that question may be a simple one – a crack in the sidewalk, a car accident – but more questions will likely follow. Who is legally responsible? Are they also financially responsible?

Each incident is unique, and so are state laws. Because of that, this guidebook is meant to serve as a high-level look at personal injury cases to provide a better understanding of basic concepts.

# What is personal injury?

A personal injury case is when a person suffers a physical injury due to another person's actions, or failure to act when the person should. The basic issues that make up a case revolve around who was liable, or legally responsible, for the incident causing harm and if compensation should be paid to the person who was injured.

## A personal injury case could be:

- ✓ Road traffic accidents such as when a vehicle collides with another vehicle, pedestrian, animal, road debris or other obstruction, such as a tree or utility pole.
- ✓ Tripping accidents inside or outside a building due to either unsafe conditions or misuse of the property.
- ✓ Assault and battery claims where assault is the threat of an imminent, harmful act and battery is the use of force with actual intentional, harmful contact with another.
- ✓ Product defect accidents due to manufacturer mistake, dangerous product design or a failure to provide adequate warning.
- ✓ Medical negligence where a patient receives improper, unskilled or negligent treatment by a physician, dentist, nurse, pharmacist or other healthcare professional.

In a personal injury case, the plaintiff (the injured party) may receive damages (monetary compensation received for your loss or injuries) from the defendant (the potentially liable party) if the person is found to be legally responsible for the injuries. You may be able to settle your damages directly with the liable person and their insurance carrier or attorney, or you can file a lawsuit and have a jury or judge determine the amount of damages to be awarded to you.

**Note:** Invasion of privacy, slander and libel are types of personal injuries but are outside the scope of this guide. Personal injuries sustained by a worker in a work-related setting (including work-related accidents or illnesses or industrial diseases) are typically handled through a state or federal statutory and administrative process known as worker's compensation. Worker's compensation cases are also not covered here.

## A few things to know

**Actual or compensatory damages.** Compensation for a loss or injury that can be proven.

**Assumption of risk.** When a person has given up some right to hold another person responsible for damages that could be caused by a product or activity because the product or activity was known to be risky.

**Comparative negligence.** Comparative negligence states that when an accident occurs, the fault/negligence of each party involved is based upon their respective contributions to the accident.

**Contributory negligence.** If a person is injured and their negligence contributed, even if in part, to the accident, the injured party would not be entitled to collect any damages from the other party who allegedly caused the accident.

**Garnishment.** A court order saying that property or monetary assets of a party may be seized to satisfy a debt.

**General damages.** Monetary recovery in a lawsuit for intangible losses suffered (such as pain, suffering, inability to perform certain functions) or breach of contract for which no exact dollar value can be calculated.

**Negligence.** A legal term for any careless behavior that causes or contributes to an accident.

**Post-judgement discovery.** Inquiries conducted through depositions, interrogatories, etc. after a judgment has been rendered to determine the nature of the debtor's assets.

**Punitive damages.** May be awarded by a jury or judge to punish the wrongdoer for reckless or deceitful behavior and to set an example to discourage that type of behavior.

**Special damages.** Damages that compensate the plaintiff for quantifiable monetary losses such as medical bills and the cost to repair damaged property and lost earnings. Distinguished from general damages, for which there is no exact dollar value to the plaintiff's losses.

**Statute of limitations.** A type of federal or state law that restricts the time within which legal proceedings may be brought.

**Strict liability.** Strict liability, sometimes called absolute liability, is the legal responsibility for damages, or injury, even if the person found strictly liable was not at fault or negligent.

# Filing a claim

## How to defend a claim

A defendant may make the argument that a plaintiff is responsible for the accident – or that they acted in such a way to make them ineligible for the damages requested.

Besides arguing that they were not at fault (and thus denying all liability for the plaintiff's injuries) a defendant may argue that they have specific defenses to liability. Common defenses to a negligence claim include the following:

**Plaintiff's role in the accident.** One of the first arguments from the defendant may be that the plaintiff is at fault – fully or partially – for causing the accident or injury. The degree to which the plaintiff is at fault can affect whether any damages are paid out or the amount of damages awarded. These arguments generally fall into the defenses of comparative negligence, contributory negligence and assumption of risk.

**Plaintiff "fails to mitigate damages."** Even if a person is injured due to another person's actions, they must still take reasonable actions to minimize the injury or amount of suffering. For instance, if a person was in a car accident but didn't seek medical care within a reasonable amount of time, the additional damage done by waiting would not be the defendant's responsibility.

**Plaintiff "fails to timely act."** The law of the state where the lawsuit is filed will have time limits within which the lawsuit must be filed. State law may also require that the plaintiff give certain notices (e.g., to a governmental defendant) or secure certain expert opinions (e.g., an independent medical expert in a medical malpractice claim) within a certain time as a prerequisite to filing any lawsuit.



### What is my case worth?

The amount paid in a personal injury case is determined by the:

- amount of expenses incurred.
- the loss of potential income the accident may have caused.
- amount required for emotional stress or suffering.

In some cases, an additional amount may be paid if a court decides the defendant's actions should be punished.

# Do I need an attorney?

## What will working with an attorney look like?

The very nature of personal injury cases typically means a high volume of claims – but yields fewer instances of people whose claims meet the standards to move forward. So, many claims do not lead to a case or qualify for assistance from an attorney.

The simple fact is that anyone with any personal injuries should consider consulting with an attorney before dealing with the liable party, the other side's attorney or the other side's insurer. This helps protect the person with injuries since the extent of injuries may not be fully known at the time that contacts are made and settlements are always made with binding releases.

*If I hire an attorney, how will they be paid?* Many attorneys take on a personal injury case on a contingent basis or “no win, no fee” agreement. If the client does not win the case, they are not responsible for paying the attorney's fees. If the case is won, however, the attorney is paid a fee based on the amount of damages awarded.

In a contingent fee arrangement, the attorney generally agrees to accept a fixed percentage (often one-third) of the amount finally paid. While you only pay the attorney if the case is won, you will still need to pay for expenses incurred in pursuing the lawsuit such as court filing fees, the costs related to deposing witnesses and similar charges.

## Going to Trial

Personal injury litigation is both lengthy and complicated and should not be entered into without representation by an attorney.

While some cases can be handled without filing a lawsuit or going to court, if the case is complex or a settlement cannot be reached, a suit may be filed and a judge or jury will consider the evidence to decide who is responsible for the injuries. The attorney for the injured plaintiff will argue the defendant caused the accident. The attorney for the defendant will try to prove their client should not be found at fault.

## Collecting judgement

In many cases, individuals (or more likely, their insurers) pay judgments they are found to owe. If the individual does not have the means to pay, or simply refuses to pay for other reasons, collecting that judgment can be difficult. In most states, an attorney or collection agency will need to be hired to help with collection efforts.

In many states, a plaintiff can uncover a debtor's income and assets through post-judgment discovery which includes depositions, interrogatories and request for production of documents.

If a judgment is assessed against the defendant, the plaintiff may be able to file to garnish a paycheck or bank account. However, there are statutory limits on whether wages can be garnished and the amount that can be.

State law sets the time limit for collecting a judgment; in some states it is as low as four, five or six years, and in others it's as many as 20 years. After that time, state law will dictate whether there is a time limit on enforcing a judgment, whether a judgment's life can be extended and if so for how long.

If a debtor files bankruptcy, the person holding a judgment will have to file a claim in the bankruptcy proceeding and halt enforcement efforts until a court issues orders in the case.

If the debtor or their property is in another state, the plaintiff will need to record the judgment as a foreign judgment in that state.



## Working with an attorney

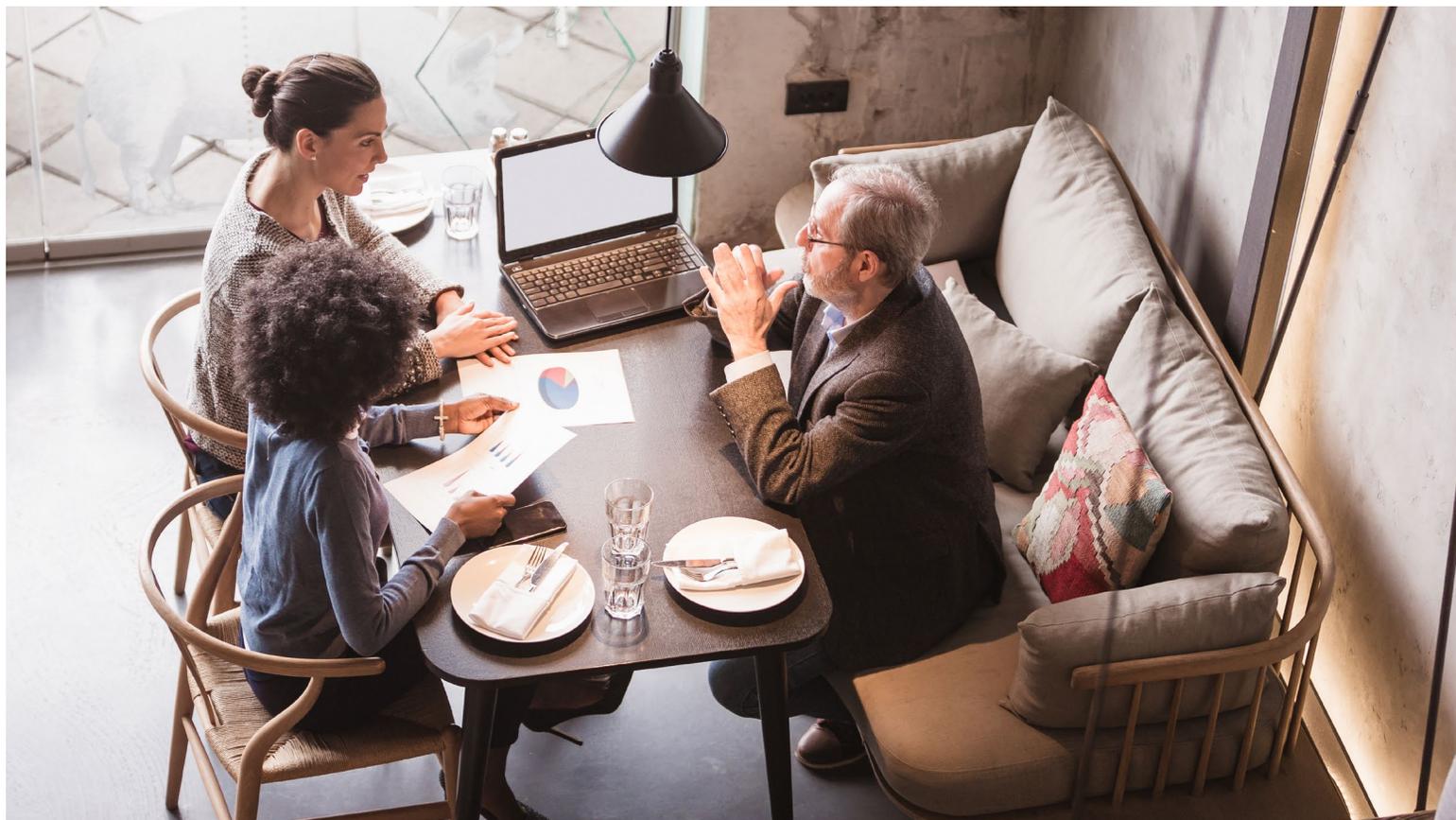
In certain situations, you may deal directly with the person at fault and their insurance company. It's wise to talk with an attorney if your case is particularly complex, your injuries are severe enough to have a great impact on your compensation or if the insurance company does not settle.

The process for reviewing personal injury claims is fairly standard. A potential plaintiff goes through their situation with someone at a law firm (this could be office staff or a paralegal too) to determine if the matter has a high likelihood of being recoverable. A complainant will probably not meet with a practicing attorney until the office has decided to take the case.

While many offices handle different type of personal injury cases, it is important to understand that just because it may be a personal injury firm, does not mean that firm handles every type of personal injury case. Also, not all personal injury firms take all cases. Certain personal injury firms are structured to only take on high-dollar cases – which require a lot of resources and a higher budget.

It may be helpful to know that even if cases have legal merit, it may not be in their best interest to pursue it, as personal injury cases are not typically pursued on principal alone. Even if there is an attorney who will take the case after it's been turned down before, it still may not be worthwhile to pursue it.

Attorney fees are usually handled on a contingency basis, but it's important to note that an attorney may still require a large retainer to hire and pay for experts, which may help in even determining whether the person has a case with merit to pursue. These fees can be upwards in the thousands of dollars.





### Prepare to meet with an attorney

If you decide to consult an attorney about your legal matters, here are a few things to think about before your meeting. By preparing this information ahead of time, you can think through your needs clearly and be sure the attorney will have the necessary information.

1. Start by thinking about your current situation, the communications you have received and any history you have about the legal matter. Summarize your legal needs in a few sentences. Use this as a starting point when you make your first call to an attorney.
2. List the names, dates and pertinent details about your legal matter so you will be ready to discuss it with your attorney either over the phone or during an in-office visit.
3. List and bring with you any documents or background information you think will be helpful in the first meeting with an attorney.
4. Consider what you would like the final outcome to be, while also being realistic about any potential judgement. Be prepared to rely on the attorney to offer insight and provide a clear picture of the time and possible costs involved with filing a claim.

## Take Control with ARAG



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