



Sean P. Riordan

THE 20 MOST COMMONLY ASKED QUESTIONS AND ANSWERS ABOUT

# THE ZADROGA LAW

WORLD TRADE CENTER RESPONDERS, RESCUERS, CLEAN-UP WORKERS,  
VOLUNTEERS AND RESIDENTS



John C. Dearie

## Memo to Responders and Residents:

In the nearly decade since the most significant public event of our lifetime - the attack of 9/11 - few lessons learned are more real than the magnitude of serious illnesses impacting on our heroic responders and area residents.

While the unthinkable enormity of over 3,000 fatalities and physical injuries rightfully dominated our Country's attention in the immediate time frame after the Towers' collapse, in more recent years serious medical problems centered on malignancies, respiratory, psychological and digestive ailments have emerged directly related to toxic site exposure. These are genuine medical conditions impacting the lives of thousands who selflessly rushed to help.

Through a combination of persistent, tireless lobbying by determined advocates, combined with steadfast political support at the highest levels of our Federal Government — the Zadroga Bill became the Zadroga Law.

This Question & Answer Brochure jointly prepared by Attorneys Sean P. Riordan and John C. Dearie attempts to clarify information concerning the Zadroga Law in response to frequently asked questions at meetings with responders and residents since President Obama recently signed into law the James Zadroga 9/11 Health and Compensation Act of 2010.

Sean is a Workers' Compensation, Social Security, Disability Pension Attorney, while John practices in the Personal Injury and Toxic Tort field.

We hope you find this information both informative and helpful.

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This bill signed into law by President Barack Obama, on January 3, 2011, is named after James Zadroga (35), a New York City Police Officer, whose death on January 5, 2006, was the first fatality attributed to toxic chemical exposure at the attack site.

## ZADROGA BILL HISTORY AND LEGISLATIVE OBJECTIVES

### 1. How did the Zadroga Bill become law?

Under the tremendous Congressional leadership of Senators Charles E. Schumer and Kirsten Gillibrand, along with Congresswoman Carolyn B. Maloney and Congressman Jerrold Nadler, supported over years by intense lobbying from an utterly dedicated, hard-working coalition of first-responder advocates and numerous Union Officials, the bill became National Law.

### 2. What does the Zadroga Law accomplish?

It guarantees continuing funding for the World Trade Center Health Program (WTC Program) within the Department of Health & Human Services (HHS) to provide medical monitoring and treatment benefits to eligible emergency responders and recovery/clean up workers who responded to the 9/11 attacks while being exposed to airborne toxins and other hazards that were released into the environment. It establishes an approximately \$2.7 billion fund to make payment for all medically necessary health and mental health care treatment.

### 3. What are the next immediate anticipated steps under Zadroga?

With all legislation, once signed into law by the Chief Executive (President, Governor, Mayor, etc.) an Agency is designated to administer the Program and, as in this law, to establish guidelines for financial awards. Under Zadroga, the Health and Human Services Secretary, Kathleen Sebelius, is the Federal Agency mandated within six months to formulate rules and regulations to implement these cases. Among her key initial decisions will be a selection of the Special Master (see Question 4) and the creation of a Claim Form requiring completion and submission by each Claimant, providing information on topics including exposure, illness, financial loss, treatment, work history, etc.

### 4. What is the role of a "Special Master" under the Zadroga Law?

It is expected that a Special Master will be appointed to develop the regulations governing the administration of the Fund and to formulate all aspects of the Program, including evaluating Claim applications, determining compensation and disseminating awards. Kenneth Feinberg, who was the Special Master under the original Victims' Compensation Fund, has been recommended by Senator Schumer to serve in the same capacity under the Zadroga Fund and has indicated Mr. Feinberg will do so pro bono (without compensation).

### 5. What are the main informational areas that will be required to be focused on under the Zadroga Law?

There are three basic areas your Claim will center upon: 1) what was your exposure in length of time, proximity to site and in what capacity you were at the site (police, fire, rescue, EMS, clean up worker, volunteer, local residents etc.). 2) what was your medical impact - injuries suffered, dates of diagnosis, treatment received and medical prognosis; 3) what was your economic loss.

### 6. When will I be able to formally apply for a Zadroga Award?

Under the legislation, by no later than June, 2011, the Claim Form will be available (hopefully sooner) and our office will send to any potential Claimant requesting one.

### 7. Generally, what classes of responders and residents are eligible for submission of Claims under Zadroga?

The U.S. Department of Health and Human Services defines eligible Claimants as those involved in the rescue, recovery, clean up and restoration during and after the attacks of 9/11, including: FDNY; NYPD; Emergency Medical Service Personnel (including paramedics); NYS Employees; other NYC Employees; Federal Employees; Responders from surrounding communities and states; Construction Workers and Heavy Equipment Operators; Volunteer Workers and, additionally, local residents residing South of Canal Street.

## ORIGINAL VICTIMS' COMPENSATION FUND

### 8. What was the primary focus of the original Victims' Compensation Fund (VCF)?

Enacted into law by the signature of President George W. Bush within months following the 9/11 attack it focused primarily on providing compensation for two victims' classes, namely: families and beneficiaries of those killed and responders who suffered physical harm in the immediate aftermath of the terrorists' attack. Under this law, \$7 billion was awarded to families and those physically injured. In total, 2,551 civilians were killed, 215 were seriously injured and 460 emergency responders were either killed or seriously injured.

**9. If I filed a claim and received an award under the original VCF Law, am I eligible for benefits under the Zadroga Bill?**

The answer appears to be "No", since final Releases were signed by individuals receiving financial compensation under the VCF, prior to receiving those award funds.

**RECENT LAWSUIT SETTLEMENT**

**10. If I was part of the recently settled lawsuit against NYC and others, (totaling \$657.5 million) can I still file a claim under the Zadroga Law?**

The short answer is absolutely "yes". However, it is quite important to note that any Zadroga financial award will be "offset" by the lawsuit settlement amount you receive. For example: If a person received a lawsuit award totaling \$50,000 and a Zadroga settlement amounted to \$75,000, the Claimant would receive \$25,000, the difference between the two amounts.



**CLAIMS FILING**

**11. Are there any tasks I should be working on now while waiting for the Zadroga Claims Form to be published?**

Even prior to the completion and distribution by the Special Master of the Claim Form this Summer, based on the areas of informational requests in the original Victims' Compensation Fund Claim Form, several topics subjects seem virtually assured to be requested and you should begin accumulating the documents and information now.....

- 1) Identify all doctors, hospital stays and medical treatments you have undergone in connection with the 9/11 illness you have suffered;
- 2) Recall as best you can the dates and duration of your work exposure at the WTC site, along with the tasks you were performing;
- 3) Itemize the economic impact you suffered from lost wages, uninsured medical treatment and out-of-pocket expenses related to your Claim injury.

**12. What is meant by the term "certified medical records"?**

The term "certified" relating to medical records simply means the records have been affirmed for accuracy and completeness relative to the content as contained in a physician, medical facility, or hospital files. It means that, in the process of certification, the data has been cross-checked with the original data source and, in all likelihood, the Special Master will require a certified set of your medical records. Many doctors' offices and medical facilities are automatically providing a "Certification Statement", but when you are requesting medical records a good practice is to always request that the records be "certified". Generally speaking your request will be complied with by the physician or facility from which you request the records.

**13. What are the most frequent medical symptoms resulting from WTC site exposure?**

The WTC Health Registry identifies the following frequent symptoms: RESPIRATORY - sinus problems, persistent cough, wheezing, shortness of breath, reactive airways, hoarseness, scarring of the lungs; PSYCHOLOGICAL - anxiety, depression, post-traumatic stress disorder (PTSD); STOMACH - acid reflux, heartburn. MALIGNANCIES.

**14. Can I claim lost earnings under the Zadroga Law?**

If you are able to show any loss of earnings, or other benefits from work that you have missed as a result of your injuries, which have not been compensated and are related to your exposure on 9/11 or thereafter, it is likely, under the Zadroga Claims Process, that you are eligible for that compensation. Additionally, any household services that you've not been able to perform as a result of your 9/11 injury may also likely be Claimed.

**15. Is there a physical geographic area that qualifies a claimant for exposure under Zadroga?**

Of course, any responder working on the immediate WTC site qualifies for exposure, but, in addition, the exposure area is expanded to include all area south of Canal Street, the Staten Island Landfill, barge loading piers and the NYC Medical Examiner's Morgue.

**16. What is meant by the term "Collateral Sources Compensation"?**

The term is meant to include any payments you may have received, or that you may have filed for, from the Social Security Administration or Workers' Compensation, as a result of your medical injuries suffered. These are factors which the Special Master will consider in evaluating your Claim and award amount.

**17. Will it be necessary to give information concerning my private insurance coverage?**

Probably, yes, so a determination can be made as to any medical services or treatments you receive, but were not covered under your own insurance plus the amount of out-of-pocket expenses you had to pay yourself, if they were not reimbursed or provided by a health care provider.

**18. How will I certify my presence on or near the site on 9/11, or in the days, weeks or months following?**

Various documentation will suffice to attest to your geographic exposure, such as an Affidavit from your employer, records of employment, medical records, Federal, State or Local Governmental records, or your own sworn statements.

**19. Can you give me some idea of what the value of my claim, under Zadroga Law will be?**

This is a totally understandable and often asked question, but the honest answer is that, at this very early stage, nobody knows and nobody can correctly even speculate. It's plain and simply too early in the process. The factors to be determined by the Special Master regarding the Claim value of each case include the overall philosophy of Claim evaluation, the detail of medical record review, the volume of Claims submitted, the geographical scope of site exposure, the approved list of eligible illnesses and many other criteria not yet defined.

**20. Has a legal fee been set within the Zadroga Law for representation on these claims?**

Yes, the new Law established a maximum legal fee of 10% of the GROSS settlement award after disbursements are deducted. So, for example, if a Claim received a Zadroga award totaling \$50,000, with disbursements of \$500 resulting in a NET settlement of \$49,500, the legal fee would total \$4,950.



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