Most people do not start a job with a perfectly clean bill of health. Old sports injuries flare up, backs creak after years of lifting, knees remember ladders, wrists tingle after long seasons of typing. When a workplace accident collides with an existing condition, the claims process gets complicated fast. It also gets personal. Pain has a history. A good workers compensation lawyer knows how to map that history, show what changed because of work, and keep the insurance company from turning background noise into a denial.

What counts as a pre-existing condition in a comp case

In workers compensation, a pre-existing condition is anything you had before the work incident or before the repetitive job exposure that built up over time. That can be a diagnosed disease like arthritis, a fully healed injury such as a torn meniscus from college, or a cluster of age-related changes on an MRI, like disc degeneration in the spine. It can also be symptoms without a formal diagnosis, for instance on and off back tightness after weekend gardening.

Two legal ideas set the stage:

- Aggravation versus exacerbation. In many states, a temporary flare of symptoms that goes back to baseline later is treated differently from a permanent worsening of the underlying condition. A permanent aggravation tends to be compensable, with benefits for treatment and, where applicable, disability. A short-term exacerbation might only cover limited care.
- Apportionment. When a worker has both a work injury and a prior condition, some states allow a slice of the disability or impairment to be assigned to the prior condition. That reduces a settlement or rating. The degree and method of apportionment varies widely. A lawyer’s job is to keep speculation from substituting for evidence.

You do not need to be in perfect health to qualify. The work exposure has to be a legal cause. In plain terms, it must contribute to the need for treatment or disability to the extent your state requires. Some states use the phrase major contributing cause, others use contributing cause, substantial factor, or a similar standard. The percentages and wording differ, but the strategy does not. Prove what changed because of work, and tie that change to objective and credible medical evidence.

Why insurers seize on old conditions

Adjusters and defense medical examiners read pre-existing like a neon sign. It gives them a way to argue the injury would have happened anyway, or that the only problem is wear and tear. I have watched perfectly capable people, with years of steady work and no missed time, get told their torn rotator cuff is just their age talking. The cost of care, and the cost of paying you while you heal, drives that posture. So does a playbook: ask about every ache you have had since high school, order a records dump, circle anything that hints at prior pain, and then point to it as the real culprit.

That is not the law. A body can have some wear and still be injured at work. The key is showing that the work event changed the picture in a meaningful way, and not just at the level of pain, but in the treatment path, function, and objective findings.

The first conversation with a client who has history

When someone calls and says, I already had a bad back, I do not start by predicting a fight, even if I know one is likely. I start by asking about the before and after. Before the incident, what could you do without thinking? Were you on restrictions? How often did you see a doctor? After the incident, what changed in how you sleep, sit, climb stairs, work a full shift?

One warehouse worker I helped had an MRI from three years prior showing moderate disc degeneration but no nerve impingement. He managed fine with home exercises. Then he lifted a 70 pound box off a pallet and felt a pop followed by electric pain down his leg. The new MRI showed a herniation that displaced the S1 nerve root. That contrast mattered. The insurer still argued age, but the imaging told a different story, and so did the timeline. He went from zero missed days to off work completely in a span of 24 hours. The claim turned on that delta.

Building the medical story, not just collecting records

A workers compensation lawyer does not just gather papers. We curate a narrative with credible anchors.

We start with baseline evidence. What did your body look like before this event, on film and in function. That might mean pulling a five year arc of imaging, old physical therapy notes, even sports physicals that show you were cleared with no restrictions. For repetitive injuries, it can mean ergonomics logs, production quotas, and tool weights that make the exposure real, not abstract.

We look for a signature change. In shoulder cases, a widened acromiohumeral interval or a full thickness tear that was not present before. In spine cases, a new disc extrusion, fresh endplate changes, or an EMG that now shows radiculopathy. In carpal tunnel claims, a post-exposure nerve conduction test that moved from borderline to moderate or severe. Objective changes do not end the debate, but they move it from opinion to evidence.

We then build a treating doctor’s opinion that withstands cross examination. Doctors know medicine. They do not always speak the legal language of causation or aggravation. A good letter from counsel helps. We outline the work activity, pre-injury baseline, post-injury findings, and the state’s causation standard, then ask focused questions. Would you state within a reasonable degree of medical probability that the lifting incident of June 3 aggravated the pre-existing lumbar degeneration, resulting in the L5-S1 herniation ***workers' compensation rights*** that necessitated surgery. The tone matters. Respectful, precise, not leading. Doctors respond better to clarity than to arguments.

Finally, we keep the story clean. Insurance carriers love gaps. If you do not mention the old injury until month three, they will say you hid it. If you suggest you were pain free when your primary care notes show intermittent complaints, they will call you unreliable. We tell the truth in a way that contextualizes the history. Yes, my knee had arthritis. Yes, I managed on ibuprofen a couple times a month. After the fall at work, I needed injections and then arthroscopy. That is what changed.

The evidence you can gather right now

Here is a short checklist I give clients with pre-existing conditions. It keeps the early steps focused and saves months of back and forth later.

- Copies of any imaging in the last five years, including the actual discs or digital access codes, not just reports
- Names of all providers who treated the same body part, plus pharmacy printouts for pain or anti-inflammatory medications
- A short timeline, in your own words, of your function in the six months before and after the incident, including work tasks you could or could not do
- Photos of your work area, tools, or equipment that show the reach, force, or posture your job required

- Any job descriptions, lift tests, or ergonomic assessments your employer or a prior employer performed

Two pages of concrete facts at the start beat 200 pages of incomplete records a year later.

Handling the recorded statement and IME with a pre-existing condition

Adjusters often schedule a recorded statement early, then later an independent medical examination, which is rarely independent. Both moments carry risk if you have a medical history.

For the statement, the lawyer’s role is to prepare you to tell the truth cleanly. That means acknowledging prior issues without minimizing or exaggerating. If you say, I never had neck pain, and a physical from last year notes neck stiffness after a road trip, the defense will make hay. But if you say, I had stiffness after long drives, nothing that limited work, and now I have constant pain with numbness into my thumb since the ladder slip on March 12, you keep credibility and draw the contrast.

For the IME, we treat it like a deposition. We go through the claims file, the timeline, prior films, and the current mechanics of your symptoms. We practice answering questions in full sentences, not as yes or no fragments that invite assumptions. If your pain varies, say how and why. If you had minor issues before, say how you managed them. I ask clients to bring a short list of concrete examples. On April 10, I tried to mow the lawn and had to stop after five minutes due to burning pain down my right leg. Specifics cut through future spin.

If the IME doctor opines that all your findings are degenerative, we do not panic. We dissect. Degeneration describes a substrate, not a state of function. A strong treating opinion that explains why a herniation on top of degeneration is the difference between a sore back and foot drop can still carry the day. When needed, we add a specialist second opinion, especially in spine and shoulder cases. Judges care about the quality of explanation, not who yells loudest.

The first 60 days of a claim when there is history

If a client calls me within days of an incident, and they mention an old injury, I set a tight plan. It keeps the file on track and makes later battles winnable.

- Secure immediate care with a provider who documents causation carefully, and request copies of the first two visits the same week to correct any charting errors
- Order targeted prior records for the same body region and obtain actual imaging, then line up side by side comparisons with a radiologist if needed
- Notify the employer in writing with a short, factual account that mentions the prior condition and describes the change since the event
- Prepare the client for the recorded statement and any nurse case manager involvement, setting boundaries for appointments and communication
- Draft a treating physician letter that lays out the legal causation standard in the relevant state and requests an opinion once initial testing returns

By the end of two months, we aim to have a coherent medical storyline, not a pile of paper.

Temporary total disability, light duty, and pre-existing limits

Employment realities press in while the legal gears turn. If your job offers light duty, and your doctor sets restrictions, take the offer if it is safe and complies with the restrictions. Turning down legitimate light duty can pause wage benefits in many states. That said, work that appears sedentary might still violate a back or shoulder restriction if it requires awkward reaches or sustained postures. Photos and short videos of the workstation help, as do clear restrictions written in functional terms: no lifting over 10 pounds, no repetitive overhead reaching, no static sitting or standing over 20 minutes without the ability to change position.

With pre-existing conditions, it is easy for the employer to assume you are slow walking your return. That is where practical transparency helps. If you can do two hour stints but then need to lie down for 30 minutes due to pain spikes, we make sure the doctor writes that, not just pain as tolerated. The difference between a vague note and a functional limit often decides whether an accommodation is real or performative.

Settlements, apportionment, and how to negotiate with history on board

When a case reaches the settlement stage, pre-existing conditions show up in two places: the impairment rating and the future medical component. If a jurisdiction assigns a permanent impairment percentage, apportionment may reduce that number for the slice deemed pre-existing. We push back with specificity. If the pre-injury MRI shows no tear and the post-injury MRI shows a full thickness tear that required surgery, apportioning half the shoulder impairment to prior wear is not evidence based. If the prior MRI showed tendinosis and the current MRI shows a small partial tear, a limited apportionment might be reasonable. Nuance and credible medical opinions move the needle.

Future medical negotiations require candor. If you already needed occasional epidural injections, a fair settlement that closes medical might include funding for a reasonable pattern of injections plus the increased likelihood of surgery now that the herniation has progressed. In larger settlements, particularly if you are or soon will be Medicare eligible, a Medicare Set Aside may be required. That is a technical, federally governed calculation. A lawyer who routinely handles these files will coordinate with a vendor to make sure the numbers satisfy Medicare’s expectations without inflating them unnecessarily.

Lump sum versus structured payouts, open medical versus closing medical, stipulations that keep the claim open for defined benefits, all depend on your tolerance for risk, the credibility of ongoing treatment needs, and your employment prospects. I often model two or three paths with clients. Keep medical open and accept a smaller cash figure now while the insurer pays for treatment, or take a larger cash figure that includes future care estimates and control your own providers, understanding the money must last. Neither path is inherently right. Your health timeline should drive the decision.

Edge cases that still succeed

Three patterns repeat in pre-existing files, and each has a path forward when handled carefully.

Degenerative disc disease with a new herniation. Insurers love to point to age related changes. The answer lies in the change in neural involvement. If the new herniation compresses a nerve root and produces objective signs like decreased reflexes, dermatomal sensory loss, or EMG confirmed radiculopathy, that is a work related change on a susceptible spine. Emphasize function before the event and the new objective deficits after. A candid treating note that spells this out carries more weight than ten pages of rhetoric.

Arthritic knee with a torn meniscus after a twist. X-rays may show tricompartmental arthritis. That does not erase a work related meniscal tear. The path is to separate baseline chondral loss from the mechanical symptoms

introduced by a tear, such as catching, locking, or joint line tenderness, then track the treatment path. If arthroscopy resolved the catching and restored function beyond the arthritic baseline, the tear was a meaningful aggravation.

Carpal tunnel in a worker with diabetes. Diabetes increases risk, but does not answer causation in repetitive wrist work. Nerve conduction studies, job demands analysis, and response to conservative treatment form the triangle. If switching to neutral wrist positions, pacing, and splinting at night reduces symptoms, and a period away from forceful gripping improves function, work factors matter. A competent opinion can still satisfy the legal standard even when diabetes is present.

Mental health overlays and pain amplification

Pre-existing depression, anxiety, or prior trauma can amplify pain perception and complicate recovery. Defense counsel sometimes tries to frame this as the only driver of symptoms. The clinical reality is more layered. If work caused a physical injury, and that injury predictably worsened mood, both conditions often require treatment under the claim. If a prior mood disorder existed, a careful psychological evaluation can tease out what symptoms worsened due to the injury and what remained at baseline. A workers compensation lawyer lines up evaluations with clinicians who understand occupational medicine, not just general practice.

Pain catastrophizing scales, functional capacity evaluations, and graded return to activity plans help in this space. They show progress and limits without reducing the case to labels. Denials based on mental health history can backfire if the file shows a strong physical injury with a rational emotional response. The right plan puts care before conflict and documents both.

Surveillance, social media, and the optics problem

With pre-existing conditions on file, surveillance teams often show up earlier. Insurers try to catch you on a good day and argue that it reflects your baseline. It rarely tells the whole story. People with spine injuries do their best to have good days. One Saturday of yard work does not undo Monday through Friday of pain. Still, optics matter. A lawyer will coach common sense: do not lift in public what your restrictions prohibit at work, avoid posting bravado on social media about pushing through pain, and do not joke online about faking it. Humor reads poorly in transcripts.

If surveillance does capture you doing an activity your doctor restricted, context can still help. People make judgment calls. If you lifted your toddler in a moment of need, say so. Better yet, avoid putting yourself in that bind by asking for help during recovery. The insurance company gets mileage from short clips. You get credibility from consistent behavior over months.

When a denial hits because of history

Even well built files get denied when a pre-existing condition is obvious. The next steps are methodical. File the necessary appeal or request for hearing within the deadline, which can be as short as 14 to 30 days in some jurisdictions. Lock in treating opinions on causation and work restrictions if you have not already. If allowed, schedule a second opinion with a specialist whose practice fits the injury. For example, a fellowship trained shoulder surgeon for a complex rotator cuff case carries more weight than a general orthopedist.

At hearing, judges respond to clarity and proportionality. They want to see you as a worker with a history who had a meaningful change because of a work event, not as a case. They care about timelines, objective findings, and

how well the medical opinions handle both the old and the new. A workers compensation lawyer who knows the local bench will calibrate the presentation to what persuades in that venue.

Return to work when you are never 100 percent

Plenty of workers never get all the way back to baseline, even with the best care. If your job is heavy and your shoulder never regains overhead strength, a vocational evaluation can help plot alternatives. If your employer cannot accommodate long term restrictions, some states provide vocational rehabilitation benefits, retraining stipends, or job placement services. They are often modest in scope, but they are real. A realistic plan that aligns with your experience beats a generic idea on paper. I have helped construction laborers transition into safety coordinator roles after obtaining short certifications, and warehouse pickers move into inventory control with targeted computer training. The legal case and the human trajectory should not be strangers to each other.

The quiet power of candor

The biggest mistake with pre-existing conditions is pretending they do not exist. The second biggest is letting them swallow the whole story. The space between those errors is where strong cases live. Tell doctors and the insurer what you had before. Then show, with records and lived detail, what changed because of work. Keep your conduct consistent with your restrictions. Let your lawyer do the framing so doctors can do the explaining.

A seasoned workers compensation lawyer is not a magician. We are translators. We translate aches and images into legal standards, reconstruct timelines from messy lives, and protect dignity in a process that often treats people like files. When a body with history meets a job with risk, the law still has room for fairness. The work is to fill that room with proof and judgment, not noise.