If you have a bad back, a cranky knee, or asthma that has bothered you for years, a work injury can feel like walking into a storm with an open umbrella. The pain is real, your job is on the line, and you know the insurance company will dig through your medical past and try to pin your current troubles on anything but work. That is the moment a steady, experienced workers compensation lawyer earns their keep.

I have lost count of the number of clients who opened our first meeting with an apology about being a “mess” before the accident. They think their history is a deal-breaker. It is not. Pre-existing conditions are common. The law in every state has a way to deal with them. The path is not the same everywhere, and it is rarely simple, but with the right strategy and supporting facts, you can recover benefits for a work-related aggravation or acceleration of a prior condition.

Why insurers fight pre-existing conditions so hard

Insurers see pre-existing conditions as leverage. If your MRI shows degeneration, they call it natural aging. If you had a shoulder strain five years ago, they say the new tear is a continuation. If you report numbness in your hands and have diabetes, they call it neuropathy instead of carpal tunnel. This is not personal. It is their playbook.

The fight happens because workers compensation is a no-fault system with limited defenses. The main question is causation. Did work cause or aggravate your condition to a compensable degree. If you walked into the job with a problem, the insurer wants to shrink the slice that work is responsible for, or erase it. The presence of old records gives them plenty to work with. A skilled attorney narrows that field back down to what matters: what changed at work, and what changed in your body.

The legal spine of these cases: aggravation, acceleration, and apportionment

Different states use different labels, but three ideas show up everywhere.

Aggravation means a work event made a pre-existing condition worse. This can be a single incident, like lifting a 60 pound box and feeling a snap in your lower back, or repetitive trauma, like years of overhead work leading to a rotator cuff tear on top of earlier tendinitis. You do not have to start with a clean slate. The before and after picture is the key.

Acceleration is about speed. Work did not create your underlying condition, but it pushed the timeline forward. A disc that might have herniated in five years herniates today after a fall from a ladder. That difference in timing can be enough.

Apportionment deals with division. Some states allow judges to split permanent disability between work and non-work causes. A doctor may say 60 percent of your neck disability comes from the new injury and 40 percent from long-standing degeneration. If your state allows apportionment, benefits can be reduced accordingly. In other states, once aggravation is proven, the employer takes the worker as they find them, and apportionment is not used to cut weekly checks, though it may still surface in permanent disability ratings. Knowing your jurisdiction’s rules shapes everything from your medical questions to your settlement math.

What changes the moment a lawyer sees a pre-existing condition

The strategy shifts early. The intake interview is longer. We map your medical history the way a surveyor maps a boundary line. We look for a baseline that can be compared to today. That can be a primary care note that says

“occasional low back soreness, managed with ibuprofen,” contrasted with new records that show radicular pain, weakness, or positive straight-leg tests. Or it can be old imaging showing mild degeneration, compared to a new MRI with an acute herniation and nerve root compression.

We also press for clarity on mechanism. With pre-existing conditions, “I hurt” is not enough. We need dates, positions, weights, and repetition counts. How many pallets were you moving per shift. What was the rack height when your shoulder caught. How long were you on the jackhammer before your hands went numb. Details turn a vague story into a credible chain of events.

Medical proof that actually moves the needle

Doctors do not always write for courts. Many medical notes are built for billing and patient care, not litigation. When pre-existing conditions are on the line, a workers compensation lawyer will often ask for tailored medical opinions that answer the legal question directly. That might mean sending a letter to your treating orthopedist that lays out the record and asks for opinions on:

- Diagnosis before the work event versus after, with objective findings that mark the change.
- Whether work was a substantial contributing factor to the current condition, to a reasonable degree of medical certainty.
- The extent, if any, of apportionment based on pre-existing disease or prior injuries, and the reasoning behind the percentages.

Insurers love Independent Medical Examinations, which are neither independent nor your doctor. A strong claim is prepared for that appointment. Clients receive a short coaching Law Offices Humberto Izquierdo session about candor and consistency. Bring a concise symptom timeline, list prior injuries without minimizing them, and describe function limits with examples. Saying “I cannot lift” is less persuasive than “I can carry eight to ten pounds at hip height but not at shoulder height without a spike of pain that lasts the rest of the day.”

Objective evidence helps. In spine cases, EMG studies that show acute denervation beat a generic “degenerative changes” line on an x-ray report. In knee cases, a post-injury MRI showing a new meniscal flap or bone bruise after a twist matters more than pre-injury chondromalacia. In carpal tunnel disputes, nerve conduction latency and amplitude changes carry weight. Pain scales matter less than consistent Cumming work injury attorney function testing over time.

The credibility gap and how to close it

Pre-existing cases often live or die on credibility. If you told your primary care doctor six months before the incident that your back pain was a 7 out of 10 most days, then reported a 4 out of 10 at the first work clinic visit because you did not want to look weak, that inconsistency will be used against you. A lawyer’s job is to surface these landmines before the insurer does, and then address them head on.

We often write a clarifying statement for the file, signed by the client, that explains context. People minimize symptoms at work. They underreport to keep shifts. Or they exaggerate on bad days and forget to correct the record later. If there is a believable, human reason for a gap, name it and move on. Juries are rare in workers compensation, but judges are people too. Straight talk, backed by records, wins.

Timelines, notice, and the early record

Many states require notice to your employer within a short window, often 30 to 90 days from the date of injury or from when you knew your condition was related to work. With a pre-existing condition, that second standard can matter. Say your shoulder gradually worsened through the spring, but you tied it to a work process only after an orthopedist explained the mechanism in July. A lawyer will capture that date of discovery and cite the law that allows it to anchor notice and claim deadlines.

Early records count more than late explanations. If the first clinic note says you hurt your back changing a tire at home, and only the next week does it mention lifting in the warehouse, you have an uphill climb. If both happened, say so the first time. A workers compensation lawyer will slow you down in that first appointment. Details today save months of fighting later.

Surveillance, social media, and the myth of the “gotcha” video

Insurers hire investigators. They park down the street and film you carrying groceries. They scour social media for beach photos. Pre-existing condition cases get this treatment more often because the insurer expects to catch you doing something that contradicts your complaints.

Here is the truth. You are allowed to have good moments on bad days. You are allowed to smile in a photo. What sinks a case is not living your life. It is claiming limits that are not real. The safest path is accuracy. If you can lift a 15 pound toddler for a minute, do not say you cannot lift anything. If you walked a mile at the park on Saturday and paid for it with a flare that night, say both. We also tell clients to go quiet on social media until the case resolves. Jokes do not read as jokes when clipped into a defense brief.

Job duties, light duty, and return to work traps

Employers sometimes offer light duty after an injury. In a perfect world, this keeps you engaged and earning while you heal. In the real world, light duty can be used to pressure people with prior conditions. The assignment starts reasonable, then the tasks creep, and before long you are back to the very motions that hurt you.

A workers compensation lawyer will ask for light duty in writing, with specific restrictions tied to a doctor’s note. If the employer cannot meet those restrictions, wage loss benefits are owed. If the employer violates them, we document each task that crossed the line, the symptoms that followed, and return to the doctor to update restrictions. Do not be the hero who “tries to push through” without telling anyone. That silence is what insurers use to argue you were fine.

Settlements, apportionment math, and the long view

Most workers compensation cases settle. Pre-existing conditions change settlement dynamics in two ways. First, if your state allows apportionment of permanent disability, expect the defense to insist on a percentage credit for the prior condition. That percentage should not be plucked from thin air. It needs a medical basis tied to function. A good lawyer will press the treating doctor for clear reasoning, and will test the defense percentages in deposition. A 30 percent pre-existing apportionment with no signs, no prior missed work, and no documented restrictions rarely survives scrutiny.

Second, medical closure is more delicate. If your underlying condition will need future care regardless of this injury, and the insurer wants to close medical benefits, you need to be sure the settlement covers the real expected cost. That might include injections every 6 to 12 months for several years, brace replacements, or a surgery that your doctor thinks is more likely than not. For claimants on or likely to be on Medicare, a Medicare Set Aside analysis may be triggered. Cutting corners here creates problems that show up years later, not during negotiations.

A tale from the file room: two backs, two outcomes

Two warehouse workers came to me within weeks of each other. Both in their forties, both smokers, both with MRIs that showed multilevel lumbar degeneration. The first had a recorded incident. He lifted a tote, felt a pop, dropped to a knee, and reported it right away. His foreman confirmed it. He saw the clinic that day, an MRI within a week showed an acute L5-S1 herniation with nerve root impingement, and he had a positive straight-leg raise on the right. He had had back soreness for years but no missed work and no treatment beyond over-the-counter meds. We obtained a crisp letter from his spine surgeon on causation and lack of apportionment. The insurer tried apportionment anyway. The judge did not bite. He treated, reached maximum medical improvement, and settled with full wage loss for 10 weeks, a fair permanent partial disability rating, and open medical for two years.

The second had a gradual story. More hours on the forklift during peak season, more pain at home. He did not report anything until he could not get out of bed one morning, and his first clinic note mentioned “yard work over the weekend” because he thought that sounded less like complaining about work. The MRI looked similar to the first case, but he had two prior episodes ten and thirteen years earlier with physical therapy and missed time. We still won benefits, but only after months of fighting and an apportionment battle that knocked down his permanency value by 25 percent. Same body type, same film, very different record. What changed the outcome was not the spine. It was the paper.

The role of depositions and carefully framed questions

In disputed causation cases, depositions of doctors matter as much as hearings. When pre-existing conditions are involved, the questions need to steer clear of traps. Ask a doctor whether degeneration was present before the injury, and you invite a lecture. Ask instead whether the clinical picture changed after the incident, and what objective signs support that. Then ask whether work was a substantial contributing factor to the change, regardless of underlying disease. This frames the legal standard correctly and focuses the doctor on what the law cares about.

A defense lawyer will push the opposite way. Did you know the patient had back pain two years ago. If you had known, would your opinion change. Do degenerative discs herniate spontaneously. These are not bad questions. They are meant to water down causation. A workers compensation lawyer counters with function based anchors. The patient performed 50 hour weeks before the incident. After, he could not sit 20 minutes without burning radicular pain. That is not a rounding error in symptoms. It is a change you can measure.

FMLA, ADA, and the edge cases outside pure comp

Not every issue sits neatly inside the workers compensation box. If your pre-existing condition qualifies as a disability under the ADA, or you have worked long enough to trigger FMLA leave, you have parallel rights that can protect your job while you recover. Coordinating these matters. If you decline a reasonable accommodation because you think it will hurt your compensation claim, you can end up losing both. If you accept a modified role that is a demotion in disguise, you might preserve temporary benefits but damage your long term earnings. An attorney who handles both comp and employment issues, or who works with a colleague who does, can help you thread that needle.

What you can do in the first 30 days

Here is a short, practical checklist I give clients with pre-existing conditions. It is not magic. It is discipline.

- Report the injury promptly, in writing if possible, and use specific descriptions of tasks and symptoms.

- Tell every doctor the same story about how it happened, and mention prior similar issues without minimizing them.
- Ask your treating doctor to note objective findings that mark change from baseline, not just pain levels.
- Keep a short daily log of function - sitting time, lifts, sleep - not pages of pain adjectives.
- Follow restrictions at work, ask for them in writing, and speak up if duties creep beyond the note.

Small steps like these build a record that aligns. When your story, your doctor's notes, and your job duties all point the same way, disputed causation becomes less attractive to the defense.

Fees, costs, and the value of patience

People worry that complicated cases cost more. In most states, workers compensation attorney fees are capped by statute and are contingent or awarded by the judge, often as a percentage of past due benefits or a slice of the settlement. You rarely pay out of pocket as you go. The true cost is time. Pre-existing condition disputes take longer. You may face multiple IMEs, two to three depositions, and hearings spread over months. Expect a range of 6 to 18 months from dispute to resolution, with shorter or longer timelines depending on the court's calendar and your medical course.

Patience helps, but passivity does not. Attend appointments, follow therapy, and communicate changes. If surgery is on the table, make that decision based on medical advice, not purely on legal posturing. Delaying necessary care can make you sicker and can hurt your claim if the insurer argues you failed to mitigate.

When a case is worth trying instead of settling

Most cases settle because the math makes sense. Some should be tried. I look for three signs that a hearing is worth the risk when a pre-existing condition is involved. First, a clean mechanism and immediate reporting. Second, strong objective evidence of change, not just pain descriptions. Third, persuasive treating physician support, with defense apportionment opinions that feel speculative. In that scenario, even in apportionment states, judges often credit the claimant. On the other hand, if the first record points to a non-work event, the timeline is fuzzy, and your own doctor hedges, settlement with a discount may be the honest outcome.

The myth that you must be perfect to be believed

People with old injuries sometimes act like defendants in their own case. They second-guess every step and feel guilty for being hurt again. You do not need a pristine medical past to deserve help. You need a fair record and a steady plan. A workers compensation lawyer focuses on change, not purity. What could you do before. What changed at work. What can you do now. That arc is what the law recognizes.

I once represented a banquet server with a long history of migraines. She slipped while carrying a tray of glasses, jarred her neck, and her headaches surged. The insurer pounced on the migraine history. We collected three years of headache logs from her phone, which showed one to two migraines per month before the fall, then five to eight per month after. Her neurologist testified that cervical strain can sensitize trigeminal pathways and amplify frequency. The judge awarded benefits. The same person, the same head, but a different life after a work event. That is how the law is supposed to work.

Final thoughts for anyone worried about their history

If you are hesitating to file because of your past, do not wait. Time blurs details and hardens skepticism. The first records carry the most weight, and a lawyer can help shape them without twisting the truth. Bring your whole history to the table. A good workers compensation lawyer is not afraid of the parts that came before. We use them to draw the line between then and now.

Expect a process, not a sprint. Expect the insurer to argue that what hurts you today was inevitable. Our job is to show that inevitability is a story, not a fact, and that work changed your timeline or your anatomy in ways the law recognizes. With the right evidence, the right questions, and a record that fits together, pre-existing conditions are not a dead end. They are a challenge that can be met.