

## Workers' Compensation Newsletter June 2018

**Upcoming Webinar!**  
6/21/18  
**Injuries Away  
From Work**  
[Register Here](#)



### THE TOP 5 LIST

## Top 5 Ways to Close A Difficult Illinois Workers' Compensation Claim

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov Workers' Compensation Department

#### 1/ Close That File!

A long held misconception is that you can't close a file without paying some permanency benefits. Don't believe it. Not every injury warrants PPD. You can safely close your file if you have paid due TTD and medical benefits and there is no indication of permanent impairment.

#### 2/ Try The Case

Don't be afraid to draw a line in the sand and proceed to trial. While most cases settle, there is value in going to trial. You reduce your leverage if your opponent knows that you're going to settle every case. Making a firm decision to try a case, especially a questionable one, pays other dividends in questionable claims that may come up later.

#### 3/ File A Motion To Dismiss

While some believe that there is no provision in the Illinois Workers' Compensation Act or case law allowing an arbitrator to dismiss a case for want of prosecution, we disagree. We have successfully dismissed cases where claimants are missing IMEs, not complying with vocational rehabilitation or failing to move their case forward.

#### 4/ Use Alternative Dispute Resolution

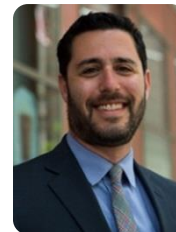
We regularly use pretrials, settlement days and mediation to close cases. While some techniques, like mediation, are not frequently used by other defense firms in Illinois, we successfully use it to resolve difficult cases.

#### 5/ Make A Proactive Offer

Make an offer, even without a demand. This allows you to be pro-active and take control of the claim. Remember, all attorneys are ethically bound to take all your settlement offers back to their clients, so it's a great way to move your case forward.



By: [Michael Milstein](#)



On 6/4/18, Governor Rauner signed a budget without any WC reforms, breaking a promise he had made for years. SB 904 also passed both houses and is awaiting the governor's signature. This bill is in response to a recent Appellate

Court case holding that a medical provider did not have standing in Circuit Court to obtain interest on late payments. This bill increases the interest penalty from 1% to 2% if a bill is paid after 30 days. In addition, it allows the provider a private cause of action in Circuit Court to obtain the interest penalty. In addition, if a provider uses electronic billing and the employer/carrier does not adhere to the "electronic claims acceptance and response process" it can be fined up to \$1,000.00 for each violation but no more than \$10,000.00 for identical violations during a calendar year.

Both Houses also passed SB 1737 which concerns insurance premiums. If the bill is signed, insurers must first prefile their rates with the Department of Insurance and cannot use them until it is approved (or not responded to within 30 days). Also, if the insurer proposes a rate increase of 5% or more, the insured must be notified within 30 days before the policy expires. If notice is not provided, then the prior rates will apply.



**SOUND BITE:** Chicago activist [Ja'Mal Green](#) discusses his candidacy for Chicago mayor.

**Rich Lenkov:** There are at least eight candidates running for mayor. We've had a couple of them on including Troy LaRaviere. There's also Garry McCarthy, Dorothy Brown, Paul Vallas, among others. One of your core issues is dealing with what you perceive as the inequality in the treatment of police and some members of the community. How would you speak to other issues to distinguish yourself from the rest of the candidates?

**Ja'Mal Green:** Firstly, I'm glad that there are so many candidates in this race, especially because all the candidates represent different communities, a different broad spectrum of issues and it's an amazing thing to see everyone come forth, not everyone will make it through but just to have all these voices is amazing. So I haven't been just talking about police reform. I've been very vocal in the progressive light of talking about economic equality, education and healthcare. We presented the most progressive platform thus far than any candidate in this race and this platform, which is on our site, [www.greenforchicago.com](http://www.greenforchicago.com) addresses so many different issues and people can read them.



## [Click Here To Listen To The Full Episode:](#)

### Recent Topics:

- Santa Fe shooting/gun control
- Equal Rights Amendment
- "Time's Up"/Me Too movement
- Supreme Court decisions
- Mueller investigation

### Past Guests:

- Alan Dershowitz
- Gloria Allred
- Jesse Jackson
- F. Lee Bailey
- Directors Julie Cohen and Betsy West of [RBG](#)

[Legal Face-Off Supreme Court Panel, State Representative Lou Lang on the Equal Rights Amendment, Inside Out Columnists on leaving a legacy and more](#)

[Chicago Mayoral Candidate Troy LaRaviere, Jeffrey Cramer on Mueller interviewing Trump, new documentary on Ruth Bader Ginsburg and more](#)

[Illinois State Representative Sara Feigenholtz, Professor Melissa Michelson on James Comey, David Keating on Blagojevich and more](#)

[IL Attorney General candidates Erika Harold & Kwame Raoul, former National Census Bureau Director Kenneth Prewitt on the Trump census, LawyerSmack and more](#)

[IL Attorney General candidates Pat Quinn & Sharon Fairley, Gloria Allred on Netflix documentary, sanctuary state lawsuit & more](#)

[Gun control laws in the wake of Parkland, Michigan State University president resignation, non-disclosure agreements & more](#)

[Gubernatorial candidate Daniel Biss, can the 25th Amendment bump Trump?, "Fire & Fury", "Time's Up" and more](#)

Please like us on [Facebook](#) and [subscribe on iTunes](#). Send us your questions and we will answer them on air—nothing is off limits.

# Insufficient Evidence of Impairment Reduces Petitioner's Award

By: [Chase Gruszka](#)



In *Weyh v. Prairie Materials*, 26 ILWCLB 53 (Ill. W.C. Comm. 2017), Petitioner worked as a cement truck driver. While operating a valve on the truck, he injured his right shoulder and elbow. Following the injuries, Petitioner underwent right shoulder surgery and conservative elbow treatment. Petitioner was then released to full-duty work where he continued to work under the same title as before the work accident and continued to receive union scale pay raises.

At trial, Petitioner sought a wage differential award. The arbitrator awarded 20% loss of the right arm and 15% person as a whole. On appeal, the Commission affirmed the shoulder award. However, the Commission also found that the 20% arm award was excessive, reducing it to 10%. The Commission explained Petitioner's testimony revolved mostly around his shoulder (and not the arm), he was able to return to his previous occupation (involving substantial use of his right arm), he did not suffer any loss of earning potential and that there was no evidence in the medical records corroborating substantial ongoing disability with the right arm.

## Practice Tip:

Consider filing an appeal for a lower loss of use award under Section 8(e) when:

1. There is evidence that Petitioner is able to return to his previous occupation
2. There is no evidence of a loss of earning potential
3. Medical evidence of a substantial ongoing disability is lacking

# Bank Teller Leaves Empty Handed

By: [Michael Milstein](#)



When it comes to repetitive trauma claims, it is always important to remember that they are difficult for petitioners to prove. Case in point is a recent Commission decision in *Marshall v. Citizen's Bank of Chatsworth*, 26 ILWCLB 47, where Petitioner, a bank teller, claimed an injury to her bilateral hands from a repetitive trauma (though it was not alleged on the Application). At the hearing, Petitioner described her job duties, including pinching and grasping money, filling ATM machines, opening mail, counting/sorting money and completing customer transactions. The arbitrator denied benefits, stating that Petitioner was no subject to continuous and repetitive use of both hands while working. Petitioner also had a history of medical issues which contributed to her hand condition. The arbitrator discredited the treating physicians for relying on incorrect job information. The Commission affirmed.

## Practice Tip:

When you obtain an IME in a repetitive trauma case, provide the doctor with detailed job information to bolster their credibility.

## Firm News

### 2018 CLM & Business Insurance Workers' Compensation Conference



On **5/22/18**, Bryce Downey & Lenkov co-sponsored a happy hour with Speed, Seta, Martin, Trivett & Stublely, LLC, Engles, Ketcham, Olson & Keith, P.C., Brant Hickey & Associates, Stockwell, Harris, Woolverton, & Helphrey, DigiStream Investigations during the 2018 CLM & Business Insurance Workers' Compensation Conference.

On **5/23/18**, [Rich Lenkov](#) presented "Navigating Mild Traumatic Brain Injury Cases" with neurologist Dr. Arthur Itkin and psychiatrist Dr. Alexander Obolsky at the 2018 CLM & Business Insurance Workers' Compensation Conference.



Additionally, [Tricia Bellich](#) presented "Premium—It's Not Just About Price!" with ArlingtonRoe Senior Workers' Compensation Broker Mary Miller. This session examined the many factors that contribute to the final premium paid by an employer.

For more information about Claims and Litigation Management Alliance, [click here](#).

## Upcoming Events



- On **6/19/18**, Bryce Downey & Lenkov is co-sponsoring a happy hour at The Horse & Plow in Kohler, Wisconsin with:
  - Integrity Medicolegal Enterprises
  - Litigation Solutions LLC
  - Absolute Solutions
  - CompAlliance
  - Fitch, Johnson, Larson & Held, P.A.

[Click here for the invitation.](#)

- On **8/8/18**, [Storrs Downey](#) will present "Ethical Issues in Employment Law" at the National Business Institute's Indiana Employment Law Seminar. For more information or to register, [click here](#).
- On **8/16/18**, [Rich Lenkov](#) will present "5 Questionable Claims & How To Defend Them" at Artex's Milestone/Millennium Risk Control Workshop in Chicago. For more information or to register, [click here](#).
- On **9/17/18**, [Rich Lenkov](#) and [Brian Rosenblatt](#) will present "When Safety Goes Awry . . . Send Lawyers, Guns and Money" at the 2018 Chicagoland Safety Health Environmental Conference. For more information or to register, [click here](#).

## Did You Know?

In addition to workers' compensation, we also handle:

- [Business Litigation](#)
- [Construction](#)
- [Labor & Employment](#)
- [Entertainment Law](#)
- [Insurance Coverage & Litigation](#)
- [Professional Liability](#)
- [Real Estate](#)



## Free Monthly Webinars

What you said about our 5/24/18 webinar,  
Settlement Strategies:

*"I felt that the topic was relevant to my day to day duties."  
"Kept it moving along and fun"  
"Good information for what adjusters have to do every day."  
"Subject matter, very interactive."*



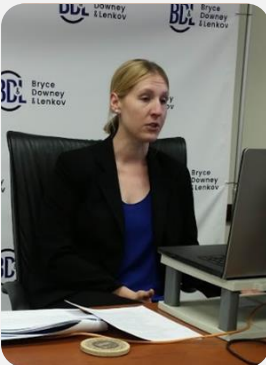
### Upcoming Webinar

6/21/18

### Injuries Away From Work

[Rich Lenkov](#)  
[Timothy Alberts](#)

[Register Here](#)



### Recent Webinars

- When Is An Employee Not An "Employee"?
- Ask Us ANYTHING
- Top 10 Differences Between IL WC & GL Claims
- The Ups & Downs Of Upper & Lower Extremity Claims
- What's This Claim Worth?
- New OSHA Regulations
- Top Employer Mistakes In Indiana

If you would like a copy of any of our other prior webinars, please email us at  
[mkt@bdlfirm.com](mailto:mkt@bdlfirm.com)

## Cutting Edge Legal Education

If you would like us to come to you for a free seminar,  
[Click here](#) or email [Rich Lenkov](#).

Our attorneys provide free seminars on a wide range of workers' compensation topics regularly. We speak to a few people or dozens, to companies of all sizes and large national organizations. The national conferences that we've presented at are:

- Claims and Litigation Management Alliance Annual Conference
- CLM Retail, Restaurant & Hospitality Committee Mini-conference
- National Workers' Compensation and Disability Conference® & Expo
- SEAK Annual National Workers' Compensation and Occupational Medicine Conference
- National Workers' Compensation & Disability Conference
- RIMS Annual Conference

Some of our previous seminars include:

- Turning The Tables: Using An Employee's Own Actions As A Defense To Their Workers' Compensation Claim
- Closing The Nightmare Case
- Workers' Compensation 101
- Mandatory CMS Reporting Requirements: What You Need To Know
- Managing & Closing WC Claims In A Cost-Effective Manner
- Top 10 Ways To Reduce Legal Expenses NOW
- The Mediation Process
- Balancing Aggressive Pursuit Of Lien Recovery With Associated Litigation Expenses
- Dealing With Difficult Claimants
- Health-Related Leave: Workers' Compensation, ADA and FMLA

# Illinois Rates At A Glance



**Bryce  
Downey  
& Lenkov LLC**

## PPD Benefits Schedule Of Body Parts

Effective Dates	Maximum TTD	Minimum PTD & Death	State Average Weekly Wage
1/15/11 - 7/14/11	1,243.00	466.13	930.39
7/15/11 - 1/14/12	1,261.41	473.03	946.06
1/15/12 - 7/14/12	1,288.96	483.36	966.72
7/15/12 - 1/14/13	1,295.47	485.80	971.60
1/15/13 - 7/14/13	1,320.03	495.01	990.02
7/15/13 - 1/14/14	1,331.20	499.20	998.40
1/15/14 - 7/14/14	1,336.91	501.34	1,002.68
7/15/14 - 1/14/15	1,341.07	502.90	1,005.80
1/15/15 - 7/14/15	1,361.79	510.67	1,021.34
7/15/15 - 1/14/16	1,379.73	517.40	1,034.80
1/15/16 - 7/14/16	1,398.23	524.34	1,048.67
7/15/16 - 1/14/17	1,428.74	535.79	1,071.58
1/15/17 - 7/14/17	1,435.17	538.19	1,076.38
7/17/17 - 1/14/18	1,440.60	540.23	1,080.45

Effective Dates	Maximum PPD
7/1/06 - 6/30/07	619.97
7/1/07 - 6/30/08	636.15
7/1/09 - 6/30/10	664.72
7/1/10 - 6/30/11	669.64
7/1/11 - 6/30/12	695.78
7/1/12 - 6/30/13	712.55
7/1/13 - 6/30/14	721.66
7/1/14 - 6/30/15	735.37
7/1/15 - 6/30/16	755.22
7/1/16 - 6/30/17	775.18
7/1/17-6/30/18	790.64

**Minimum Rate Death & Total Permanent Disability:**  
50% of the Statewide Average Weekly Wage

**Maximum Rate Death Benefit:**  
The greater of \$250,000 or 20 years  
Effective 2/1/06 – the greater of  
\$500,000 or 25 years

**Temporary Total Disability (TTD) Rate:**  
66-2/3% (.667) x AWW

**Permanent Partial Disability (PPD) Rate:**  
60% (.6) x AWW

\*Number if children and/or spouse = number of dependents.

Minimum TTD & PPD	Single	Married	1 DEP.	2 Dep.	3 Dep.	4+ Dep.
TTD & PPD 7/15/10 - 7/14/17	\$220.00	*	\$253.00	\$286.00	\$319.00	\$330.00

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833 West Lincoln Highway  
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Schererville, IN 46375  
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Fax: 219.213.2259

For Injuries Occurring	Before 7/20/05	7/20/05 - 11/15/05	11/16/05 - 1/31/06	2/1/06 - 6/27/11	On or after 6/28/11
Disfigurement	150	162	150	162	162
Thumb	70	76	70	76	76
First (Index) Finger	40	43	40	43	43
Second (Middle) Finger	35	38	35	38	38
Third (Ring) Finger	25	27	25	27	27
Fourth (Little) Finger	20	22	20	22	22
Great Toe	35	38	35	38	38
Each Other Toe	12	13	12	13	13
Hand	190	205	190	205	205
Carpal Tunnel Due To Repetitive Trauma					28.5 - 57
Arm	235	253	235	253	253
Amputation Above Elbow	250	270	250	270	270
Amputation At Shoulder Joint	300	323	300	323	323
Foot	155	167	155	167	167
Leg	200	215	200	215	215
Amputation Above Knee	225	242	225	242	242
Amputation At Hip Joint	275	296	275	296	296
Eye	150	162	150	162	162
Enucleation Of Eye	160	173	160	173	173
Hearing Loss Of One Ear (Under WC Act)	50	54	50	54	54
Hearing Loss Of Both Ears (Under WC Act)	200	215	200	215	215
Testicle--1	50	54	50	54	54
Testicle--2	150	162	150	162	162
The law places a value on certain body parts, expressed as a number of weeks of compensation for each part.					

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