



BRYCE DOWNEY & LENKOV
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Workers' Compensation Newsletter March 2018

Upcoming Webinar!
3/27/18

Top 15 IN Workers'
Compensation Tips
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THE TOP 5 LIST

Top 5 Things an Employer Should Do The Day They Receive Notice of A Work-Related Injury

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov Workers' Compensation Department

1/ Talk To Your Employee

This is obvious, but still the most important thing that you can do. Find out exactly what happened, directly from the source. Do this as early as possible, when your employee's memory is fresh. Secure the claimant's version of events, especially if the claim is questionable.

2/ Talk To Co-workers

While it's important to get the employee's version, it is equally important to verify their story from co-workers. This is especially true if they witnessed the incident.

3/ Correct Hazardous Conditions

From a safety and a legal perspective, it's important to correct any conditions that may pose a hazard to other employees.

4/ Take Care Of Paperwork

Complete any relevant paperwork, including internal or state-mandated incident reports.

5/ Report The Incident

Of course, you don't have to report every incident to your attorney. However, for certain claims, getting your counsel, carrier and other partners involved early will help protect your interests down the road.

LEGISLATIVE UPDATE



By: [Michael Milstein](#)



As the gubernatorial race enters the final month before the March primary, workers' compensation reform is again at the forefront. In his State-of-the-State address, Governor Rauner again called for legislators to enact workers' compensation reform, without mentioning specifics. Chris Kennedy, who is running for the Democratic nomination, seemed to downplay the importance of workers' compensation to employers noting that "when I was at the Merchandise Mart, I dealt with 5,000 companies. Not one of them ever asked me about workers' comp...". Both JB Pritzker and Chris Kennedy support raising the minimum wage, which would effectively increase average weekly wages across Illinois.

Once the nominations are set, we expect vigorous debate regarding the direction of workers' compensation in Illinois. We will keep you updated on developments.



SOUND BITE: IL House of Representatives candidate Tregg Duerson explains how his father's NFL experience inspired him to support The Duerson Act.

Rich Lenkov: Talk to us about your relationship with your dad, Dave Duerson and how you became involved in this very important issue.

Tregg Duerson: 7 years ago my father tragically took his own life but before taking his own life he simultaneously donated his brain to science. We followed through and as a result to giving it to Boston University we had the result that came up that he did have CTE which is a disease caused by repetitive head trauma. Now in 2011, which is not that long ago but back then there wasn't that much awareness around concussions or CTE and how sports should change. So my family and I are put in a position where we had a lot of contacts to world's top neurologists and advocates and we really wanted to be a part of helping youth sports and protecting young athletes and that really put us on the front lines. In 2012 we helped with a concussion donation to all Chicago public schools that play football. In 2015 we got behind a bill that requires kids to see a medical professional before returning to play after they've had a concussion. And currently I sit in Illinois High Schools Sports Association's Sports Advisory Board advising them on how to make sports safer for all children in Illinois. This is a passionate issue for us and we're evolving with the game and science.



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

Recent Topics:

- Gun control
- Mueller investigation
- "Time's Up"/Me Too movement
- Supreme Court decisions

Past Guests:

- Alan Dershowitz
- Gloria Allred
- Jesse Jackson
- F. Lee Bailey
- Sheriff David Clarke

[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](#)

[Cook County Board candidates Lowry & Degnen, a former football pro turned barrister, the Newtown legacy & more in the last LFO of 2017!](#)

[Can Trump obstruct justice?, Bob Fioretti on his run for Cook County Board President, Blago](#)

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Don't Get Aggravated By Aggravation Claims

By: [Emily Schlecte](#)



In *Watson v. Wal-Mart Associates Inc.*, 25 IL WCLB 204 (Ill. W.C. Comm. 2017), the Illinois Workers' Compensation Commission found that Petitioner failed to prove that his condition was aggravated by work.

Petitioner alleged that he sustained bilateral meniscal knee tears as a result of pushing carts for Wal-Mart. Petitioner also alleged that the accident aggravated his bilateral knee pre-existing arthritis. Specifically, Petitioner stated that he was attempting to maneuver carts to avoid hitting a parked car when he felt a painful pulling or stretching in the back of both knees.

Petitioner testified that he experienced past episodes of intermittent knee pain but that it would subside with over the counter medication and rest. Petitioner's treating physician opined that the parking lot incident aggravated Petitioner's arthritic condition to the point where Petitioner was now symptomatic. The physician based his opinion on Petitioner's subjective reporting that he had persistent bilateral knee pain.

The arbitrator found that Petitioner sustained a compensable aggravation and awarded benefits, including a bilateral total knee replacement.

On appeal, the Commission reversed and denied benefits. The Commission found that the arbitrator's reliance on the treating physician's opinion was misplaced. Specifically, the Commission found that the treating physician relied solely on the history related to him by Petitioner. Petitioner told the doctor that he did not have any pain in his knees before the work accident. However, the evidence revealed that a few days after the accident, Petitioner complained of ongoing knee pain for 4 months.

The Commission placed greater weight on the testimony of Respondent's Section 12 examiner, who opined that the medial meniscal tears in both knees was consistent with chronic degenerative tearing. Moreover, the examiner opined that the tears were not caused by pushing carts at work.

Practice Tip:

Petitioner's subjective reporting is not enough to win! It is always a good idea to have your IME doctor compare objective findings with subjective complaints.

Location, location, location

By: [Chase Gruszka](#)



In *Gilmartin v. Kipin Industries Inc.*, 25 ILWCLB 208 (Ill. W.C. Comm. 2017), Petitioner worked as a project manager for a Pennsylvania employer in West Virginia and fell ill. He was diagnosed with an aneurysm and underwent surgery. Petitioner filed a workers' compensation claim in Illinois as he worked in Chicago for 4 years prior to working in West Virginia. Petitioner also worked in different cities across the country. The arbitrator denied benefits because Petitioner's injuries did not arise out of his employment.

On Appeal, the Commission dismissed the case for lack of jurisdiction. Given that Petitioner's employer was a Pennsylvania corporation and the accident occurred in West Virginia, the only way for Illinois to have jurisdiction was if the contract of hire was made in Illinois. In this case, there was no evidence of the hiring process, where Plaintiff applied for the job or where he interviewed.

Given the lack of evidence, there was no basis to establish that the location of contracting for employment occurred in Illinois. Petitioner argued that because his first assignment was in Chicago, there was jurisdiction. However, even relying on this fact, the Commission had to infer that the employment contract was made in Illinois and found it unreasonable. As a result, the Commission dismissed the case for lack of jurisdiction.

Practice Tip:

Make Petitioner prove every aspect of their case – including proper jurisdiction.

Firm News

Hustle Up Hancock 2018

On 2/25/18, Team BDL participated in Hustle up the Hancock. This year, the event raised over \$960,149 for lung disease research, advocacy and education.

Our best times were Michael Towns for the half climb (10:37-52 floors) and Stuart Fisher for the full climb (17:10-94 floors).



36th Annual CAI Illinois Condo-HOA Conference & Expo

On 2/23/18-2/24/18, [Jeanne Hoffmann](#) and [Geoff Bryce](#) exhibited at the 36th Annual CAI Illinois Condo-HOA Conference & Expo at the Donald E. Stephens Convention Center in Rosemont, IL.



Polar Plunge 2018

On 3/4/18, the firm's bravest souls dove into the icy waters of Lake Michigan in support of Special Olympics' annual Polar Plunge. Team BDL raised \$2,865.

BDL kept up the Olympic spirit dressed as members of the U.S. and Canadian curling teams.



Upcoming Seminars

- On 5/23/18, [Rich Lenkov](#) will participate in “Navigating Mild Traumatic Brain Injury Cases in the Workers’ Compensation Environment” at the 2018 CLM & Business Insurance Workers Compensation Conference. For more information or to register, [click here](#).
- On 5/23/18, [Tricia Bellich](#) will participate in “Premium--It's Not Just About Price!” at the 2018 CLM & Business Insurance Workers Compensation Conference. For more information or to register, [click here](#).

Did You Know?

In addition to workers’ compensation, we also handle:

- [Business Litigation](#)
- [Business Transactions & Counseling](#)
- [Corporate/LLC/Partnership Organization & Governance](#)
- [Construction](#)
- [Employment & Labor](#)
- [Entertainment Law](#)
- [Insurance Coverage & Litigation](#)
- [Intellectual Property](#)
- [Medical Malpractice](#)
- [Professional Liability](#)
- [Real Estate](#)
- [Transportation](#)

Free Monthly Webinars

What you said about our 2/22/18 webinar,
When Is An Employee Not An "Employee"?

"Topic that doesn't get discussed much, nice refresher"

"Specific examples of cases"

"Great hypotheticals. Makes you really consider who is an employee and who is not"

"I like the interactive questions"



Upcoming Webinar

3/27/18

Top 15 Indiana Workers' Compensation Tips

Tricia Bellich

Renée Day

[Register Here](#)



Recent Webinars

- The Ups & Downs Of Upper & Lower Extremity Claims
- Illinois Workers' Compensation Reform
- New OSHA Regulations
- 1st Annual Great American BDL WC Quiz
- Common Workers' Compensation Issues Defined
- Indiana Forms: Taking A Claim From Start To Finish

If you would like a copy of any of our other prior webinars, please email us at 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

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	Minimum Rate Death & Total Permanent Disability: 50% of the Statewide Average Weekly Wage
7/1/05 - 6/30/06	591.77	
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	

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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PPD Benefits Schedule Of Body Parts

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.

Disclaimer:

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