

Workers' Compensation Newsletter July 2018

Upcoming Webinar!

8/30/18

**Top Reasons Why
Plaintiffs Retain
Counsel**

[Register Here](#)



THE TOP 5 LIST

Top 5 Ways Employers Can Use an Employee's Actions To Defend Their Workers' Compensation Claim

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov Workers' Compensation Department

1/ Violation of Safety Rule

If you can prove that an employee violated a known and enforced safety rule, you can defend their claim. You have to show that the violation of the safety rule took the Petitioner outside the scope of his or her employment. We have successfully won cases at trial using this defense.

2/ Intoxication/Drug Use

If an employee tests positive for drugs or alcohol following an injury, the employer gets the benefit of the presumption that it was the drugs or alcohol that caused the injury, not work. This presumption is rebuttable, but the employee has a fairly high burden to overcome. As a practical matter, the positive drug or alcohol test should always be supported by a toxicologist's opinion in order to prevail on this issue at trial.

3/ Horseplay

An employee who is injured while engaged in horseplay does not recover. The more that the action was personal to the employee—rather than related to employment—the more likely it will be held to be horseplay rather than work-related.

4/ Fights

In order for a fight to be work-related, Petitioner cannot be the one who started it and the fight must relate to a work issue. If Petitioner cannot prove either of these facts, you can successfully deny the claim.

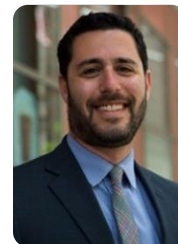
5/ Detour

Generally, going to and coming from work is not compensable: An exception exists for travelling employees, who are given greater latitude. However, if that travelling employee detours from a work-related activity into a personal activity, his or her injury will not be compensable.

Illinois LEGISLATIVE UPDATE



By: [Michael Milstein](#)



As discussed in our last update, the legislature passed SB904 and SB1737 at the end of June. Both bills are still awaiting a decision from Gov. Rauner. We believe both bills will be vetoed, as they were when similar bills were passed last year.

We expect workers' compensation to be an issue that is often discussed during the gubernatorial campaign. However, we don't think any meaningful reforms will be signed into law until after the election is over.

We will continue to update you as new policies are discussed between Gov. Rauner and J.B. Pritzker.



Indiana LEGISLATIVE UPDATE



By: [Kirsten Kaiser Kus](#)



New Indiana Workers' Compensation Act Laws
Effective July 1, 2018

Senate Bill 290:

- Employers must pay benefits within 30 days of an award being issued. Imposes civil penalties against employers that do not pay benefits when due: \$50 for first offense, \$150 for second and \$300 for third offense
- Increases the penalty against employers that fail to provide notice of workers' compensation (WC) coverage from \$50 per day, to \$100 per day
- Allows employers that have mobile or remote employees to convey notices and information about WC coverage to those employees in an electronic format, or in the same manner as employer conveys other employment-related information
- Provides that a permanently, totally disabled worker must reapply to the second injury fund for a wage-replacement benefit every three years instead of every 150 weeks
- Requires the reporting of workplace injuries that necessitate medical attention beyond first aid, instead of injuries that previously caused an absence from work for more than one day
- Specifies that reporting requirements for workplace injuries are intended to be consistent with the recording requirements set out in the US Occupational Safety and Health Administration's regulations

Senate Bill 369:

- Adopts a drug formulary to restrict opioid prescriptions and abuse. Indiana is adopting the MCG Health's Official Disability Guidelines which uses a preauthorization where doctors cannot prescribe "not recommended" medications unless the insurer first approves. If the employer/carrier does not approve the medication, Utilization Review Accreditation Commission will be used to make a determination on the request. The employer/carrier will be required to notify the prescriber and injured worker within five days of the request. Failure to provide written notification within that timeframe will lead to the prescriber's request being considered approved with reimbursement authorized. If a decision is made to deny the requested prescription, the injured worker will be able to appeal to the Indiana Workers' Compensation Board for a final determination

- There will be a ban on reimbursing prohibited drugs effective 1/1/19, but injured workers taking those meds before July 2018 may continue to do so until January 2020

Can't Hide From Full-Time

By: [Emily Schlecte](#)



In *Cisarik v. Northwest Building Material*, Petitioner sustained a left knee injury and was released with permanent restrictions. After vocational training, Petitioner worked part-time as a customer service representative and earned \$10/hr. The arbitrator found that Petitioner's part-time position constituted suitable employment and awarded wage differential benefits.

The Illinois Workers' Compensation Commission (IWCC) affirmed the arbitrator's decision, however it also found that the part-time hours did not represent Petitioner's true earning capacity. The IWCC noted that there was no physical limitation or medical restriction prohibiting Petitioner from working 40 hours. The IWCC concluded that Petitioner's suitable employment should be 40 hours per week earning \$10/hr.

Practice Tip:

Use a 40 hour workweek for wage differential calculations unless Petitioner has medical evidence to the contrary.

Medical Care Providers Have No Standing Under Workers' Compensation Act To Pursue Interest On Medical Bills

By: [Jeanmarie Calcagno](#)



The First District of the Appellate Court vacated a Cook County Circuit Court award of \$37,229 to two medical care providers for statutory interest on their outstanding medical bills. In *Medicos Pain & Surgical Specialists, S.C. & Ambulatory Surgical Care Facility, LLC v. Travelers Indemnity Co. of America*, 2018 IL App (1st) 162591, No. 1-16-2591, the providers filed an action in Circuit Court for statutory interest pursuant to Section 8.2(d) of the Illinois Workers' Compensation Act ('the Act') for accrued interest on their medical bills that were outstanding for years prior to payment.

As basis for its decision to vacate the Circuit Court award, the Appellate Court determined that medical care providers did not have a right of action to seek interest for any failure of the employer or its workers' compensation carrier to comply with the Act for non-payment of interest as they are not members of the class for whose benefit the Act was enacted. The Appellate Court reiterated its rationale as set forth in the earlier case of *Marque Medicos LLC v. Zurich American Insurance Co.* that a party may assert its rights under the Act only if a private cause of action for same was authorized by the legislature.

In his special concurring opinion, Justice Gordon succinctly stated, "The injured worker did not request enforcement of Section 8.2(d) in the proceedings before the Workers' Compensation Commission, and the plaintiffs were not parties in that proceeding. The Circuit Court of Cook County had no jurisdiction to decide the issue of interest and cannot decide any of the theories advanced by plaintiffs."

Practice Tip:

We often see demands for "statutory interest" on medical bills, including for accepted, disputed and/or denied treatment. Although the provider has no standing to pursue an action for statutory interest, the petitioner does. Prompt handling of the medical bills will assist in limiting interest-seeking actions. Address the medical bills early on with a demand for itemized and CPT-coded statements. Promptly deny in writing all disputed and/or denied bills and set forth the basis for same.

Employee's Home Office Set-Up Does Not Place Petitioner At Increased Risk

By: [Emily Schlechte](#)



In *Garrett v. Liberty Mutual Insurance Company*, the Illinois Appellate Court found that the Illinois Workers' Compensation Commission (IWCC) properly denied benefits because Petitioner failed to prove that he suffered an accident which arose out of and in the course of his employment.

Petitioner argued that he sustained a disabling back condition after he stood up to get a piece of paper. In support of his position, Petitioner introduced ergonomic assessments of his home office and testified that he was exposed to a greater risk of injury due to the physical arrangement of his office, including his desk and chair height.

The court found that although Petitioner was at work, rising from his chair to retrieve paper was not an act that he was instructed to perform or had a duty to perform. The IWCC discussed Petitioner's risk of injury and found that the risk of injury was not distinctly associated with Petitioner's employment. Rather, the risk of injury was a neutral risk, which is compensable only when

Petitioner establishes that he was quantitatively or qualitatively exposed to the risk to a greater degree than the general public.

The court also affirmed the IWCC's findings that the act of standing from a seated position to be incidental to, or required by, Petitioner's assigned job duties. Moreover, Petitioner's act of rising from his chair, without more evidence, was insufficient to establish a work-related accident.

Practice Tip:

If a petitioner works from a home office, ask whether the task associated with the injury is inherent to their work.

For more information on our Workers' Compensation practice, please [click here](#).



Legal Face-Off is a fast paced one-hour legal podcast. Rich Lenkov and Christina Martini of McDermott Will & Emery discuss the hottest issues in sports, Hollywood, politics and current events with contrasting legal perspectives.

SOUND BITE: Former Chicago Police Department Superintendent [Garry McCarthy](#) discusses his campaign to replace Mayor Rahm Emanuel.

Rich Lenkov: Given your experience in law enforcement—including serving as the Chicago Police Department's Superintendent from 2011-2015—public safety is obviously one of your biggest priorities. Where has Rahm Emanuel failed in this area and tell us what you would do in the first 50 days of a McCarthy administration to reduce crime?

Garry McCarthy: The politics have ruled the day in the police department here. It's a political organization; it needs to be a performance-based organization. This was evident subsequent to my termination. City Hall came into the department, rewrote policies, and was literally conducting a witch hunt. Minor disciplinary cases that were in the pipeline while I was superintendent resulted in people being forced to resign after I was terminated. That was all because the mayor thought it was politically astute for him to be tough on the police, not recognizing the fact that in 2016 less than half of 1% of the shootings in the city were police-related. Not all of them were bad shootings, some were very much justified. Had nobody been shot by a police officer in 2016 4,300 people still would have been shot. The police aren't the problem in this city—the criminals are.

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



Recent Topics:

- SCOTUS decisions
- Trump's immigration policy
- "Time's Up"/Me Too movement
- Equal Rights Amendment
- Chicago mayoral candidates

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](#)

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

Firm News

Northern Illinois University College Of Law 14th Annual Golf Outing



Bryce Downey & Lenkov proudly sponsored NIU's 14th Annual Law Golf Outing at the River Heights Golf Course in DeKalb on 6/8/18. Proceeds from the event were donated to NIU's Alumni Council Scholarship, which is awarded to a third-year student at graduation. Rich Lenkov proudly serves on NIU's Board of Visitors.

6th Annual Agassiz Elementary Dodgeball Duel 2018

The firm was proud to sponsor the 6th Annual Agassiz Elementary Dodgeball Duel, Parents v. Teachers on 6/15/18. Score was 5-4 for the teachers in a hard-fought battle. Rich Lenkov led the Parents Team.



Chicagoland Construction Scholarship Foundation Golf Outing

Bryce Downey & Lenkov participated in the Chicagoland Construction Scholarship Foundation's 2018 Golf Outing on 6/27/18. Participants competed both on and off the course for cash and additional prizes.



Rich Lenkov Published In Workers' Compensation Magazine

[Rich Lenkov](#) recently moderated a forum for *Workers' Compensation Magazine*. "Controlling Medical Costs" featured workers' compensation professionals, who discussed trends, factors and methods for keeping medical costs down. The forum was published in the summer issue of *Workers' Compensation Magazine*.

[Click here](#) to view the full article.



BDL is Growing!



We are proud to welcome [Diandra Abate](#) to our Workers' Compensation practice. Diandra zealously advocates for employers and insurance carriers in related litigation. Prior to joining Bryce Downey & Lenkov, Diandra handled workers' compensation at another prominent Chicago defense firm, managing all aspects of the litigation process. She argues complex matters before administrative agencies and state courts while working with each client to manage risk and obtain favorable results.

While in law school, Diandra was an editor for the *DePaul Journal of Sports Law*. When she is not practicing law, Diandra enjoys staying active whether it is working out, running, or playing golf.

Upcoming Events

- 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 **8/21/18**, Bryce Downey & Lenkov is co-sponsoring a happy hour at Latitudes in Orlando, Florida during the 73rd Annual Workers' Compensation Educational Conference and the 30th Annual Safety and Health Conference.
- On **8/22/18**, [Rich Lenkov](#) and [Tim Alberts](#) will present at the 73rd Annual Workers' Compensation Educational Conference and the 30th Annual Safety and Health Conference. 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:

- [Appellate Law](#)
- [Business Law](#)
- [Condominium Law](#)
- [Construction Law](#)
- [Entertainment Law](#)
- [General Liability](#)
- [Healthcare Law](#)
- [Insurance Law](#)
- [Intellectual Property](#)
- [Labor & Employment Law](#)
- [Products Liability](#)
- [Professional Liability](#)
- [Real Estate](#)
- [Transportation Law](#)

Free Monthly Webinars

feedback from our 6/21/18 webinar,

2nd Annual Great American BDL WC Quiz:

"I enjoyed learning more about defense tactics and case law, plus the contests."

"Great refresher - even though I tanked the test!"

"Very fun and informative"

Next Upcoming Webinar
8/30/18

Top Reasons Why Plaintiffs Retain Counsel

[Kirsten Kaiser Kus](#)
[James C. Yankosky](#)

[Register Here](#)



Recent Webinars

- Settlement Strategies
- 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.

Cutting Edge Legal Education

If you would like us to come to you for a free seminar,

[Click here](#) or email [Rich Lenkov](mailto:Rich.Lenkov@bdlfirm.com)

Our attorneys provide free seminars on a wide range of workers' compensation topics regularly. We speak to individuals and companies of all sizes. Some of 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

CHICAGO, IL:

200 North LaSalle Street
Suite 2700

Chicago, IL 60601

Tel: 312.377.1501

Fax: 312.377.1502

SCHERERVILLE, IN:

833 West Lincoln Highway
Suite 210

Schererville, IN 46375

Tel: 219.488.2590

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.					

Disclaimer:

The content of this document has been prepared by Bryce Downey & Lenkov LLC for informational purposes. This information is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. You should not act upon this information without seeking advice from a lawyer licensed in your own state. In considering prior results, please be aware that: (1) each matter is unique and (2) you should not rely on prior results related to past performance to predict success or results in future matters, which will differ from other cases on the facts and in some cases on the law. Please do not send or disclose to our firm confidential information or sensitive materials without our consent. If you would like more information on any of the topics discussed above, or have any questions regarding these issues or any aspect of Illinois Workers' Compensation law, please contact Rich Lenkov at 312-327-0038 or rlenkov@bdlfirm.com or any member of our workers' compensation team.

Advertising Material