

## Workers' Compensation Newsletter August 2018

Upcoming Webinar!  
8/30/18  
Key Differences in  
Illinois & Indiana  
Workers' Compensation  
[Register Here](#)



### THE TOP 5 LIST

#### Top 5 Things That Petitioner's Attorneys Tell You That You Should Question

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov Workers' Compensation Department

##### 1/ "My client is still treating"

This is probably the most common response I hear from opposing counsel as to why they can't settle a case. Often, it's simply not true. Generally, people who are being treated actually see doctors. If you get this response from opposing counsel, ask them to prove it by producing recent medical records.

##### 2/ "This is my bottom line"

The truth is, there is no such thing as a real bottom line. If an attorney is motivated to settle a case, there is always room for negotiation. Remember: you have the ultimate leverage, money.

##### 3/ "There is no subrogation potential"

Don't rely on opposing counsel to tell you whether there is any third-party liability for which you may recover. Petitioner's counsel may not know very much about personal injury law, or simply may not have the time to investigate it. Do your own independent investigation to determine whether there is any possibility of recovering your lien.

##### 4/ "This is a case that we have to try"

Nonsense. There is no such thing as a case that you have to try, only cases where the parties have not tried hard enough to settle. We settle all kinds of cases, big and small, even in the face of obstacles like when Petitioner is still treating. That said, it's true on our side that there are some cases that we simply have to take a hard line on and try.

##### 5/ "I'll call you back soon"

Self-explanatory.



By: [Emily Schlecte](#)



SB 904 is still awaiting a decision from Gov. Rauner. We expect the decision on 8/29/2018. This bill would increase the interest penalty from 1% to 2% if a medical bill is paid after 30 days. It would also allow the provider a private cause of action in circuit court to obtain the interest penalty. SB 1737 concerns insurance premiums and also sits with Gov. Rauner.

In other news, on 8/31/18, Gov. Rauner will announce which arbitrators have been re-appointed.



**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 Assistant U.S. Attorney and King & Spalding partner [Patrick Collins](#) discusses the Manafort jury deliberations.

**Rich Lenkov:** We heard the judge was very vocal going after the government's case. He admonished them for rolling their eyes; he said not to mention collusion, and early on he said to stop talking about his lavish lifestyle. Does that resonate with a jury?

**Patrick Collins:** If I was a prosecutor, I would be scared to death of that jury issue. The judge was really hard on the prosecution throughout the trial. He often told them to move along, suggesting to the jury that what the government was doing was a waste of time. As a prosecutor, I'd be very concerned that the judge—keep in mind that most of the jury had not been in a court room before and the judge threw a good joke once in a while—was someone they feel they can identify with, and if he thinks this is a waste of time, then they probably should too.

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



## Recent Topics:

- SCOTUS decisions
- Manafort trial
- 3D guns controversy
- "Time's Up"/Me Too movement
- Chicago mayoral candidates

## Past Guests:

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

[Manafort trial, 3D guns lawsuit, CPS Inspector General & much more](#)

[Alan Dershowitz on impeaching Trump, a new Chicago law school, the president of the Federal Bar Association and a new legal app](#)

[Chicago mayoral candidate Garry McCarthy, former Supreme Court clerks Scodro & Keller on Kavanaugh, Anurima Bhargava on new Trump affirmative action policies](#)

[LFO's SCOTUS panel, ACLU's David Cole, Mailee Smith, Shannon Shepherd, Jordan Goodman](#)

[Robert Blagojevich on a commutation for his brother, Chicago mayoral candidates Paul Vallas & Lori Lightfoot, Karla Altmayer on new DOJ asylum regulations](#)

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

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

# Talk Is Cheap: Why Simply Testifying Is Not Enough

By: [Timothy Furman](#)



In *Holland v. Murray Developmental Center*, 26 ILWCLB 84 (Ill. W.C. Comm. 2017), the Illinois Workers' Compensation Commission (IWCC) excluded Petitioner's overtime from her average weekly wage calculation.

At trial, Petitioner showed that she worked overtime every week that she worked, aside from one.

Petitioner testified that approximately 50% of the overtime that she worked was mandatory. The arbitrator included Petitioner's overtime in calculating her AWW.

The IWCC overturned the arbitration finding and excluded Petitioner's overtime from her AWW. The IWCC stated that Petitioner failed to prove her overtime was consistent and required by her employer. The IWCC pointed to the fact that Petitioner offered no evidence to support her testimony, and was unable to show which hours on her wage statement were in fact mandatory.

## Practice Tip:

Unrebutted testimony, on its own, is not enough to establish that overtime is mandatory.

# Nice Guys Finish Last

By: [Tim Alberts](#)



In *Tangen v. Verizon Wireless*, 26 ILWCLB 81 (Ill. W.C. Comm. 2017), the Illinois Workers' Compensation Commission denied all benefits after finding that Petitioner's accident did not occur in the course and scope of his employment.

Petitioner, a store manager for Verizon Wireless, agreed to cover a shift for a co-worker whose car would not start on a day that Petitioner was not scheduled to work. While driving from home to work that day, Petitioner was involved in a motor vehicle accident.

At trial, Petitioner argued that he faced greater risks traveling to work on a day when he was not scheduled to work. The arbitrator found that the fact that Petitioner drove to work on a day he was not scheduled to work did not expose him to a greater risk than traveling to his place of employment on a day he was scheduled to work. Consequently, the arbitrator found that

Petitioner's accident did not arise out of and in the course of his employment and denied all benefits.

On Petitioner's appeal, the Commission affirmed.

## Practice Tip:

Accidents that occur while commuting to and from work do not arise out of and in the course of employment, and should be denied, regardless of the circumstances.

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

Our other practice areas include:

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

## Firm News

### 73<sup>rd</sup> Annual Workers' Compensation Educational Conference

On 8/22/18, [Rich Lenkov](#) and [Tim Alberts](#) presented at the 73rd Annual Workers' Compensation Educational Conference in Orlando, Florida. The national conference brings workers' compensation professionals together for insightful presentations, education and networking.



### Artex's Milestone/Millennium Risk Control Workshop

On 8/16/18, [Rich Lenkov](#) presented "5 Questionable Claims & How To Defend Them" at Artex's Milestone/Millennium Risk Control Workshop in Chicago. This interactive session provided real-world workers' compensation scenarios and discussion. [Click here](#) for more information on Artex.



### Lorman Education Construction Training



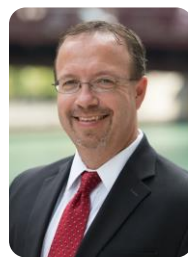
On 8/23/18, [Samuel Levine](#) presented "Allowances and Contingencies: How to Avoid Disputes" for Lorman Education Services. Samuel discussed types of allowances, potential disputes concerning allowances, contractual provisions related to contingencies and accounting for contingencies.

### National Business Institute's Indiana Employment Law Seminar



On 8/8/18, [Storrs Downey](#) presented at National Business Institute's Indiana Employment Law Seminar. The two-day event provided practical courses in employment law fundamentals. Storrs addressed ADA – From Accommodation to Discrimination, Equal Employment Laws (Title VII, ADEA, GINA, EPA, PDA, and More) and Ethical Issues in Employment Law.

### BDL is Growing!



We are proud to welcome [Jeff Williams](#) to our Indiana office. Jeff joins our Workers' Compensation practice. He also has experience with litigation involving creditors' rights, property disputes, personal injury, medical malpractice, municipal government representation and general civil litigation.

Prior to joining Bryce Downey & Lenkov, Jeff was the Deputy Prosecuting Attorney for Starke County, Indiana. Jeff was born in Missouri and grew up in South Africa.

### Upcoming Events

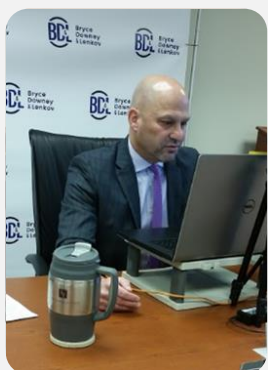
- 9/17/18 – [Rich Lenkov](#) and [Brian Rosenblatt](#) will present "When Safety Goes Awry . . . Send Lawyers, Guns and Money" at the 2018 Chicagoland Safety Health Environmental Conference. For more information or to register, [click here](#).



## Free Monthly Webinars

feedback from our 7/17/18 webinar,  
2<sup>nd</sup> Annual Great American BDL WC Quiz:

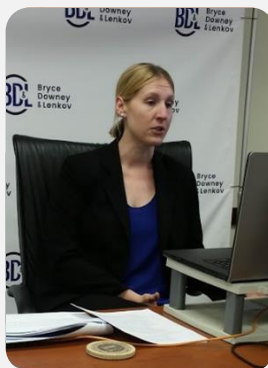
*"I enjoyed learning more about defense tactics and case law, plus the contests."  
"Great refresher - even though I tanked the test!"  
"Very fun and informative"*



### Next Upcoming Webinar 8/30/18 Key Differences in Illinois & Indiana Workers' Compensation

[Kirsten Kaiser Kus](#)  
[Timothy Furman](#)

[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](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](mailto:Rich.Lenkov).

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:

- Workers' Compensation Educational Conference
- 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:

- 5 Questionable Claims & How To Defend Them
- 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<br>PTD & Death | State Average<br>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  
Tel: 219.488.2590  
Fax: 219.213.2259

| For Injuries Occurring  | Before<br>7/20/05 | 7/20/05 -<br>11/15/05 | 11/16/05 -<br>1/31/06 | 2/1/06 -<br>6/27/11 | On or after<br>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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