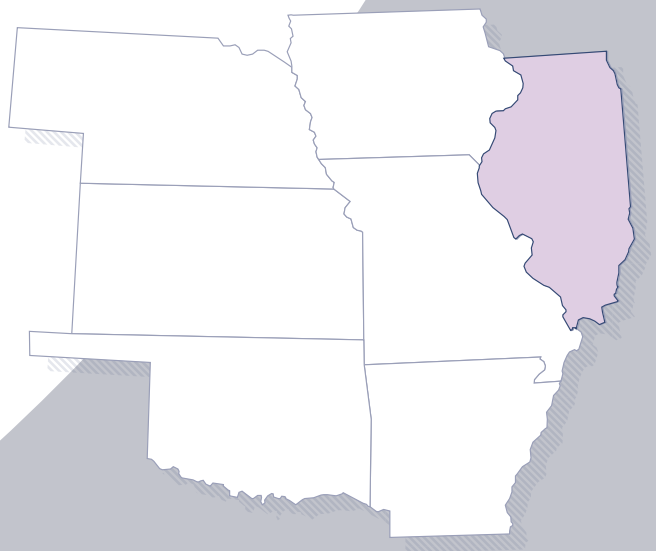
Workers Compensation Reference Guide

Illinois



ILLINOIS WORKERS' COMPENSATION

I. Jurisdiction - Illinois jurisdiction is appropriate when:

A. If the petitioner is injured in Illinois, even if the contract for hire is made outside of Illinois.

B. The petitioner's employment is principally localized within Illinois, regardless of the place of accident or the place where the contract for hire was made.

C. If the last act necessary to complete the contract for hire was made in Illinois.

II. Compensability Standard

A. Accident or accidental injury must arise out of and in the course of employment.
   1. Accident arises out of the employment when there is a causal connection between the employment and the injury.
   2. Injury must be traceable to a definite time, place, and cause.

B. *Medical Causation*: The petitioner must show that the condition or injury might or could have been caused, aggravated, or accelerated by the employment.

III. Employee must provide notice of the accident.

A. The petitioner must give notice to the employer as soon as practicable, but not later than 45 days after the accident.

B. Defects/Inaccuracy in the notice is no defense unless the employer can show it was unduly prejudiced.
   - This is difficult to show in Illinois because the petitioner directs his/her own medical treatment.

IV. Accident Reports

A. Employer must file a report in writing of injuries which arise out of and in the course of employment resulting in the loss of more than three scheduled workdays.
   - This report must be filed between the 15th and 25th of each month.

B. For death cases, the employer shall notify the Commission within 2 days following the death.

C. These reports must be submitted on forms provided by the Commission.

V. Application Filing Periods - Statute of Limitations

A. Petitioner must file within three years after the date of accident, or two years after the last compensation payment, whichever is later.

B. In cases where injury is caused by exposure to radiological materials or asbestos, the application must be filed within 25 years after the last day that the petitioner was exposed to the condition.
    1. New legislation (SB 1596) allows toxic exposure claims to be filed beyond the 25-year period directly against the employer in civil court.

VI. Average Weekly Wage (AWW)

A. General Rule: Divide the year's earnings (52 weeks) of the petitioner by the number of weeks worked during the year.
    1. *e.g.*, Sum of wages for 52 weeks prior to the accident = $40,000.
        - $40,000/52 = $769.23.

B. If petitioner lost five or more calendar days during a 52-week period prior to the accident, then divide the annual earnings by the number of weeks and portions of weeks the petitioner actually worked.
    1. e.g., Sum of wages for 52 weeks prior to the accident = $30,000 but petitioner missed 10 days = $30,000/50 = $600.00.

C. If petitioner worked less than 52 weeks with the employer prior to the injury, divide amount earned during employment by number of weeks worked.
    1. e.g., Petitioner worked 30 weeks and earned $20,000 during this time $20,000/30 = $666.66.

D. If due to shortness of the employment, or for any other reason it is impractical to compute the average weekly wage using the general rule, average weekly wage will be computed by taking the average weekly wage of a similar employee doing the same job.

E. Overtime—Overtime is excluded from AWW computation unless it is regular or mandatory.
    1. If overtime is regularly worked, it is factored into AWW but at straight time rate.
    2. Overtime is considered regularly worked on a case by case basis, but it has been determined that it is regular when:
        a. Claimant worked overtime in 40 out of 52 weeks
        b. Working more than 40 hours 60% of time
        c. Working overtime in 7 out of 11 weeks prior to an injury

3. If overtime is infrequently worked but it is mandatory it must be considered in AWW computation.

F. When calculating a truck driver's AWW, the only funds to be considered are those that represent a "real economic gain" for the driver. *Swearingen v. Industrial Commission*, 699 N.E.2d 237, 240 (Ill. App. 5th Dist. 1998).
   1. Petitioner's gross earnings for the 52 weeks prior to the date of loss including all earnings made per mile are divided by 52 to determine the AWW. However, any monies that the driver uses to pay for taxes, fees, etc., are not included in the gross earnings, as they do not represent real economic gain.

VII. Benefits and Calculations

A. **Medical Treatment**—Pre-2011 Amendments: Petitioner chooses the health care provider, and the employer/insurer is liable for payment of:
   1. First Aid and emergency treatment.
   2. Medical and surgical services provided by a physician initially chosen by the petitioner or any subsequent provider of medical services on the chain of referrals from the initial service provider.
   3. Medical and surgical services provided by a second physician selected by the petitioner (2nd Chain of Referral).
   4. If employee still feels as if he needs to be treated by a different doctor other than the first two doctors selected by the petitioner (and referrals by these doctors), the employer selects the doctor.
   5. When injury results in amputation of an arm, hand, leg or foot, or loss of an eye or any natural teeth, employer must furnish a prosthetic and maintain it during life of the petitioner.
   6. If injury results in damage to denture, glasses or contact lenses, the employer shall replace or repair the damaged item.
   7. Furnishing of a prosthetic or repairing damage to dentures, glasses or contacts is not an admission of liability and is not deemed the payment of compensation.

B. **2011 Amendments** (In effect for injuries on or after September 1, 2011)
   1. Section 8(4) of the Act now allows employers to establish Preferred Provider Programs (PPP) consisting of medical providers approved by the Department of Insurance.
      - The PPP only applies in cases where the PPP was already approved and in place at the time of the injury. Petitioners must be notified of the program on a form promulgated by the Illinois Workers' Compensation Commission (IWCC).
   2. Under the PPP, petitioners have 2 choices of treatment providers from within the employer's network. If the Commission finds that the second choice of

physician within the network has not provided adequate treatment, then the petitioner may choose a physician from outside the network.

3. Petitioners may opt out of the PPP in writing, at any time, but this choice counts as one of the employee's two choices of physicians.
4. If a petitioner chooses non-emergency treatment prior to the report of an injury, that also constitutes one of the petitioner's two choices of physicians.

C. **Medical Fee Schedule**—Illinois Legislature created a Medical Fee Schedule that enumerates the maximum allowable payment for medical treatment and procedures.
   1. Maximum fee is the lesser of the health care provider's actual charges or the fee set for the schedule.
   2. The fee schedule sets fees at 90% of the 80th percentile of the actual charges within a geographic area based on zip code.
   3. The 2011 Amendments to Section 8.2(a) of the Act reduces all current fee schedules by 30% for all treatment performed after September 1, 2011.
   4. Out-of-state treatment shall be paid at the lesser rate of that state's medical fee schedule, or the fee schedule in effect for the Petitioner's residence.
   5. In the event that a bill does not contain sufficient information, the employer must inform the provider, in writing, the basis for the denial and describe the additional information needed within 30 days of receipt of the bill. Payment made more than 30 days after the required information is received is subject to a 1% monthly interest fee. (Prior to the Amendments, this fee accrued after 60 days, now it accrues after 30 days.)

D. **Temporary Total Disability (TTD)**
   1. 2/3 of AWW
   2. If temporary total disability lasts more than three (3) working days, weekly compensation shall be paid beginning on the 4th day of such temporary total incapacity. If the temporary total incapacity lasts for 14 days or more, compensation shall begin on the day after the accident.
   3. Minimum TTD rate is 2/3 (subject to 10% increase for each dependent) of Illinois minimum wage or Federal minimum wage, whichever is higher.
      - For the minimum and maximum rates for various dates.

E. **Temporary Partial Disability (TPD)**
   1. 2/3 of the difference between the average amount the petitioner is earning at the time of the accident and the average gross amount the employee is earning on the modified job.
   2. Normally applicable in light duty situations.

F. **Permanent Partial Disability (PPD)**
   1. 60% of AWW

2. See MVP rate card for value of body parts
3. Minimum PPD rate is 2/3 (subject to 10% increase for each dependent) of Illinois minimum wage or Federal minimum wage, whichever is higher—as of 01/01/16 the Illinois minimum wage is higher ($8.25/hour).

G. **Person as a whole—Maximum of 500 weeks**

1. General rule if injury is not listed on rate card, it is a person as a whole injury.
2. Common for back injuries.

H. **Level of the hand for carpal tunnel claims = 190 weeks**

1. For claims arising after September 1, 2011, the 2011 Amendments return the maximum award for the loss of the use of a hand for carpal tunnel cases to the pre-2006 level of 190 weeks. The maximum award for the loss of the use of a hand in carpal tunnel cases was previously 205 weeks. For all hand injuries not involving carpal tunnel syndrome, the maximum award for the loss of the use of a hand remains at 205 weeks.

I. **Carpal Tunnel Syndrome**

1. The 2011 Amendments to Section 8(e)9 cap repetitive Carpal Tunnel Syndrome awards at 15% permanent partial disability of the hand, unless the Petitioner is able to prove greater disability by clear and convincing evidence.
2. If the petitioner is able to prove by clear and convincing evidence greater disability than 15% of the hand, then the award is capped at 30% loss of use of the hand.
3. The 2011 Amendments apply to injuries arising after September 1, 2011, and only apply to cases involving *repetitive* Carpal Tunnel Syndrome. The cap of 15% or 30% does not apply to cases involving Carpal Tunnel Syndrome brought on by an acute trauma.

J. **Disfigurement**

1. Usually scarring.
2. Must be to hand, head, face, neck, arm, leg (only below knee), or chest above the armpit line.
3. Maximum amount is 150 weeks if the accident occurred before 07/20/05 or between 11/16/05 and 01/31/06.
4. Maximum amount is 162 weeks if accident occurred between 07/20/05 and 11/15/05 or on or after 02/01/06.
5. Disfigurement rate is calculated at 60% of AWW.
6. A petitioner is entitled to *either* disfigurement or permanent partial disability for a specific body part, not both.

K. **Death**

1. Maximum that can be received can't exceed the greater of $500,000 or 25 years of benefits.

L. **Permanent Total Disability**

1. Only arises when the petitioner is completely disabled which means the petitioner is permanently incapable of work.
2. Statutory PTD
    a. Statutory PTD arises when: loss of both hands, arms, feet, legs, or eyes.
    b. Employee receives weekly compensation rate for life, or a lump sum (based on life expectancy)
    c. PTD payments are adjustable annually at the same percentage increase as that which the state's average weekly wage increased, but this is capped at the maximum rate.
3. Odd-Lot PTD
    a. A petitioner who has disability that is limited in nature such that he or she is not obviously unemployable, or if there is no medical evidence to support a claim of total disability, the petitioner may fall into the odd-lot category of permanent total disability.
    b. The petitioner must establish the unavailability of employment to a person in his or her circumstances.
    c. The petitioner must show diligent but unsuccessful attempts to find work, or that by virtue of the petitioner's medical condition, age, training, education, and experience the petitioner is unfit to perform any but the most menial task for which no stable labor market exists.
    d. Once the petitioner establishes that he or she falls into this odd-lot category, then the burden of proof shifts to the respondent to show the availability of suitable work.

M. **Vocational Rehabilitation**

1. Employer must prepare a vocational rehabilitation plan when both parties determine the injured worker will, as a result of the injury, be unable to resume the regular duties in which he was engaged at the time of the injury, or when the period of total incapacity for work exceeds 120 continuous days.
2. If employer and petitioner do not agree on a course of rehabilitation, the Commission uses the following factors to determine if rehabilitation is appropriate:
    a. Proof that the injury has caused a reduction in earning power.
    b. Evidence that rehabilitation would increase the earning capacity, to restore the petitioner to his previous earning level.
    c. Likelihood that the petitioner would be able to obtain employment upon completion of his training.
    d. Petitioner's work-life expectancy.

e. Evidence that the petitioner has received training under a prior rehabilitation program that would enable the petitioner to resume employment.
f. Whether the petitioner has sufficient skills to obtain employment without further training or education.

3. Employer is responsible for payment of vocational rehabilitation services.

N. **Maintenance**

1. Not technically TTD.
2. A component of vocational rehabilitation.
3. Maintenance is paid once claimant at MMI, and undergoing vocational rehabilitation.
4. Two common situations:
   a. When petitioner is undergoing vocational rehabilitation and has been placed at MMI, maintenance picks up where TTD ceases (at the TTD rate) –similar to a continuation of TTD.
   b. When employee has completed a vocational rehabilitation program and has yet to be placed in the labor market.

O. **Wage Differential**

1. Compensates for future wage loss
2. To qualify for wage differential, claimant must show:
   a. A partial incapacity that prevents him from pursuing his or her "usual and customary line of employment."
   b. Earnings are impaired.
3. Employee receives 2/3 of the difference between the average amount he would be able to earn in the full performance of his duties in the occupation in which he was engaged at the time of the accident and the average amount which he is earning or is able to earn in some suitable employment or business after the accident.
4. The 2011 Amendment to Section 8(d)(1) now provides that for accidents on or after September 1, 2011, wage differential awards shall be effective only until the Petitioner reaches age 67, or five years from the date that the award becomes final, whichever occurs later.

P. **Ratings**

1. The 2011 Amendments to Section 8.1b of the Act provide that physicians may now submit an impairment report using the most recent American Medical Association (AMA) guidelines.
2. In determining the level of permanent partial disability, the Act states that the Commission shall base its determination on the reported level of impairment, along with other factors such as the age of the Petitioner, the occupation of

the Petitioner, and evidence of disability corroborated by the treating medical records.

3. The relevance and weight of any factor used in addition to the level of impairment as reported by the physician must be explained in a written order by the Commission.

VIII. Preferred Provider Program

A. The 2011 Amendments to the Workers' Compensation Act amended Section 8(4) of the Act to allow employers to establish preferred provider programs (PPP) consisting of medical providers approved by the Department of Insurance.

- The PPP only applies in cases where the PPP was already approved and in place at the time of the injury.
- Petitioners must be notified of the program on a form promulgated by the Illinois Workers' Compensation Commission.

B. Under the Act, petitioners have 2 choices of treating providers from within the employer's network.

- If the Commission finds that the second choice of physician within the network has not provided adequate treatment, the employee may choose a physician from outside of the network.

C. A petitioner may opt out of the PPP in writing at any time, but the decision to opt out of the PPP counts as one of the petitioner's two choices of physicians.

D. Under the Section 8(4), if the petitioner chooses non-emergency treatment prior to the report of an injury, that constitutes one of the petitioner's two choices of physicians.

IX. Illinois Workers' Compensation Procedure

A. **Steps of a Workers' Compensation Claim and Appellate Procedure**:

1. Petitioner files an Application of Adjustment of Claim with the Illinois Workers' Compensation Commission. The Application for Benefits must contain:
   a. Description of how the accident occurred
   b. Part of body injured
   c. Geographical location of the accident
   d. How notice of the accident was given to or acquired by the employer
2. After Application is filed, the claim is assigned to an Arbitrator. The claim will appear on the Arbitrator's status call docket every three months unless it is motioned up for trial pursuant to 19(b) or 19(b-1).

a. Three arbitrators are assigned to each docket location. These three arbitrators rotate to three different docket locations on a monthly basis.
b. One of the three arbitrators assigned to a particular docket location will be assigned the case. If a party requests a 19(b) hearing, the hearing will be held before the assigned arbitrator, even if that arbitrator is not at the docket where the case is located.

3. If no settlement is reached, the case can be tried before the Arbitrator for a final hearing.
   a. Arbitrator is the finder of fact and law, and issues a decision.

B. **Pretrial Procedure**

1. Depositions - cannot take the petitioner's deposition.
2. Subpoenas - easy to get, normally Arbitrator has signed in advance
3. Records of Prior Claims - determine if a credit allowed
   - No credits for person as a whole injuries (including shoulders, which are now treated as person as a whole injuries)
4. Section 12 Medical Examination - petitioner must comply
   a. Used to avoid penalties
   b. Used to investigate petitioner's prior treatment and diagnoses
   c. Can be scheduled at reasonable intervals
   d. Must pay mileage
5. Settlement

C. **Arbitration Procedure**

1. When the Application for Adjustment of Claim is filed, the Commission assigns the docket location (normally within the vicinity of where the injury occurred).
2. Cases appear on the call docket on three-month intervals until the case has been on file for three years, at which point it is set for trial unless a written request has been made to continue the case for good cause. (This request must be received within 15 days of the status call date).
   a. Cases that are more than three years old are referred to as "above the red line," and red line cases are available on the call sheet at the Illinois Workers' Compensation Commission website.
   b. If no one for the petitioner appears on a red line case at the status conference, the case can be dismissed by the arbitrator for failure to prosecute.
3. If a case is coming up on the call docket, a party can request a trial.
   - This request must be served on opposing counsel 15 days before the status call.
   - At the status call, the attorneys will select a time to try the case.

4. If both parties are in agreement, they may request a trial at the monthly call docket.
5. If a case is not coming up on the call docket, and a party has a need for an immediate hearing, the party can file a motion to schedule the case for a 19(b) hearing.
    a. The party requesting the 19(b) hearing must only give the other party 15-days notice.
    b. A 19(b) hearing is not proper where the employee has returned to work and the only benefit in dispute amounts to less than 12 weeks of temporary total disability.
6. A pretrial conference can be requested by either party prior to the start of a trial.
    - The benefit of a pretrial conference is that the same arbitrator over a pretrial conference will hear the actual trial, so the parties will have a good idea how the arbitrator feels about the case or a particular issue.
    - Both parties must consent to a pretrial conference.
7. Emergency Hearings under Section 19(b-1)
    a. Petitioner not receiving medical services or other compensation.
    b. Petitioner can file a petition for an emergency hearing to determine if he is entitled to receive payment or medical services.
    c. Similar to hardship hearings in Missouri
    d. Effectively serves the same purposes as a 19(b) hearing but affixes deadlines.
8. If a case is tried by an arbitrator and the arbitrator's award resolves the case (*i.e.*, the parties do not reach a settlement) medical benefits will remain open.
    - Future medical benefits can only be closed through a settlement agreement.
    - Modification of permanency benefits under 19(h) can only be closed through a settlement agreement.

D. **Appellate Procedure**

1. Arbitrator’s decision can be appealed to a panel of three Commissioners of the Illinois Workers’ Compensation Commission (ten members appointed by Governor—no more than six members of the same political party).
    a. Must file a petition for review within 30 days of receipt of Arbitrator’s award.
2. Decision of the Commissioners can be appealed to the Circuit Court.
3. Circuit Court Decision can be appealed to the Illinois Appellate Court’s Industrial Commission Panel.
4. If Appellate Panel finds case significant enough, it will submit it to the Illinois Supreme Court.

X. Penalties Relating to Actions of Employer/Insurer

A. 19(k) Penalty for Delay—PPD, TTD and/or Medical

1. When there has been unreasonably delayed payment or intentionally underpaid compensation.
2. Penalty is 50% of compensation additional to that otherwise payable under the Act.
3. This section is invoked when the delay is a result of bad faith.
4. Amount of penalty is based on amount of benefits which have accrued.
5. Commission will use Utilization Review as a factor in determining the reasonableness and necessity of medical bills or treatment.
    - Utilization review can also be utilized to avoid penalties.

B. 19(l) Penalty for Delay—TTD

1. If employer or insurance carrier fails to make payment "without good and just cause"
2. The arbitrator can add compensation in the amount of $30/day not to exceed $10,000.
3. This section invoked even if the payment is not a result of bad faith
4. Generally penalties are not awarded if the employer has relied on a qualified medical opinion to deny payment of benefits.

C. Employer's Violation of a Health and Safety Act

1. If it is found that an employer willfully violated a health/safety standard, the arbitrator can allow additional compensation in the amount of 25% of the award.

XI. Penalties Relating to Actions of the Petitioner

A. Intoxication

- For accidents <u>before</u> September 1, 2011, if the court finds that accident occurred because of intoxication then injury is not compensable.

1. Intoxication not per se bar to workers' compensation benefits.
2. Intoxication will preclude recovery if it is the sole cause of the accident, or is so excessive that it constitutes a departure from employment.
    - For accidents <u>on or after</u> September 1, 2011, the Amended Section 11 of the Act provides that no compensation shall be payable if:
3. The petitioner's intoxication is the proximate cause of the petitioner's accidental injury.
4. At the time of the accident, the petitioner was so intoxicated that the intoxication constituted a departure from the employment.

- The 2011 Amendment provides that if at the time of the accidental injuries, there was a 0.08% or more by weight of alcohol in the petitioner's blood, breath, or urine, or if there is any evidence of impairment due to the unlawful or unauthorized use of cannabis or a controlled substance listed in the Illinois Controlled Substances Act, or if the petitioner refuses to submit to testing of blood, breath, or urine, there shall be a *rebuttable presumption* that the petitioner was intoxicated and that the intoxication was the proximate cause of the petitioner's injury.
- The petitioner can rebut the presumption by proving by a preponderance of the evidence that the intoxication was not the proximate cause of the accidental injuries.

B. **Unreasonable/Unnecessary Risk**

1. If the petitioner voluntarily engages in an unreasonable risk (which increases risk of injury), then any injuries suffered do not arise out of the employment.

C. **Fraud**

1. The 2011 Amendments provide the Department of Insurance with authority to subpoena medical records pursuant to an investigation of fraud.
2. The 2011 Amendments eliminate the requirement that a report of fraud be forwarded to the alleged wrongdoer with the verified name and address of the complainant.
3. The 2011 Amendments provide for penalties for fraud, based on the amount of money involved. These penalties begin at a Class A misdemeanor (less than $300) to a Class I felony (more than $100,000). The Amendments also require restitution be ordered in cases of fraud.

XII. Workers' Occupational Diseases Act - Covers slowly developing diseases that do not arise out of an identifiable accident or occurrence but not repetitive trauma.

A. **Occupational Disease** – "A disease arising out of and in the course of the employment or which has become aggravated and rendered disabling as a result of the exposure of the employment."

B. Exposure can be for any length of time (even if very brief).

C. The employer that provided the last exposure is liable for compensation no matter the length of the last exposure (unless claim is based on asbestosis or silicosis - must be exposed for at least 60 days by an employer for it to be liable).

D. Petitioner must prove he was exposed to a risk beyond that which the general public experiences.

E. Applies only to diseases that are "slow and insidious"

1. e.g., kidney ailment cause from repetitive exposure to liquid coolant.
2. e.g., asthma aggravated by white oxide dust.

XIII. Repetitive Trauma - Covered Under the Workers' Compensation Act

A. Date of Injury for Repetitive Trauma
   1. Date of injury is the date on which the injury "manifests itself."
   2. "Manifests itself" - General Standard - the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person—Landmark case: *Peoria County Belwood Nursing Home v. Indus. Commn.,* 505 N.E.2d 1026 (Ill. App. 1987).
   3. The *Belwood* Standard has been expanded slightly over the years.
   4. Courts have found date of injury to be:
      a. Date injury became apparent to a reasonable person.
      b. Last date of work at the employer prior to the disablement (time at which employee can no longer perform his job).

XIV. Third-Party Recovery

A. Workers' Compensation Act prohibits petitioners from bringing tort actions against their employers

B. An injured petitioner may pursue tort action against a third party.

C. The third party has a right to contribution from the employer which is limited to its liability under the Workers' Compensation Acts.

D. Typically respondents can recovery around 70 to 75% of what was paid out in benefits.

XV. Assaults

A. If subject matter causing altercation is related to work then injuries from an assault are compensable.

B. Exception: If the aggressor is injured = no compensation.
e.g., Waitresses arguing over tables and the argument turns physical when one waitress strikes the other—this is compensable.

XVI. Minors (under 16 years of age)

A. Receive a 50% increase in benefits even if they fraudulently misrepresent their age.

B. Minors may elect within six months after accident to reject the Workers' Compensation Remedies and sue in civil court (potentially high payout).

XVII. Voluntary Recreational Programs

A. Injuries incurred while participating in voluntary recreational programs do not arise out of and in the course of the employment even though the employer pays some or all of the cost.

B. If the employer orders the employee to participate then the recreational injury is compensable.

XVIII. Second Injury Fund

A. Only pays when employee has previously lost an arm, leg, etc. and subsequently loses another arm, leg, etc. in an independent work accident that results in the employee being totally disabled.

B. Present employer liable only for amount payable for the loss in the second accident.

RECENTLY ASKED QUESTIONS IN ILLINOIS

FROM ISSUES ADDRESSED IN RECENT ILLINOIS CASES

Q: Is a petitioner entitled to TTD benefits when an employer offers transitional, light-duty work at another entity within the petitioner's restrictions?

A: No, as long as the petitioner's earnings remain the same and remains an employee of Respondent.

In *Stegan v. Reladyne, LLC*, the Commission reversed the arbitrator's ruling and held that a petitioner was not entitled to TTD benefits during a period when Respondent enrolled the petitioner in its transitional work program, matching the petitioner with a position within his restrictions. The petitioner sustained a compensable injury to his shoulder, which precluded him from working his normal and usual tasks as a forklift operator. However, the authorized treating physician allowed him to return to work in a light-duty capacity. Unable to accommodate the petitioner's work restrictions, Respondent placed the petitioner in its Transitional Work Program, specifically with Habitat for Humanity, where his work activities included sorting of donations and customer service – within his restrictions. The petitioner refused to participate in the program and did not report to Habitat for Humanity on the day he was scheduled to work because he testified that Respondent, and not Habitat for Humanity, was his employer.

The Commission determined that because the petitioner remained an employee of Respondent, was to be paid his regular salary and subject to Respondent's human resources and attendance policies, his refusal to report for the assigned, transitional work disqualified him from entitlement to TTD benefits. The Commission noted the petitioner is not entitled to TTD benefits if work within the prescribed restrictions can be found regardless of with whom and is not otherwise shown to be unreasonable. The petitioner in this case could not demonstrate that he was unable to work, given that the transitional light-duty position offered by Respondent fell within his restrictions. As such, the Commission held that the petitioner was not entitled to TTD benefits during the period of time Respondent provided light-duty, transitional work and the petitioner refused to show up for the same.

Gary Stegan, Petitioner, 17 IL. W.C. 07749 (Ill. Indus. Com'n Mar. 21, 2019

Q: Is a petitioner entitled to maintenance benefits when s/he is not undergoing a self-directed job search or formal vocational rehabilitation after being asked to apply for a permanent, light duty job within his restrictions following termination by the employer?

A: No, likely not.

In *Beverage v. Illinois Workers' Compensation Commission*, the appellate court held that a petitioner was not entitled to over three years of maintenance benefits because did not participate in a self-directed job search or vocational rehabilitation program after being

terminated from Respondent and put on 15-pound lifting restriction. The petitioner injured his low back while working for the employer. While undergoing treatment, Respondent terminated the petitioner but later asked the petitioner to interview for a different job with work restrictions in a supervisory capacity, but the petitioner did not apply because he did not think he was qualified. Respondent paid TTD benefits from the date of termination through the date he was given a 15-pound lifting restriction by his treating physician. Instead of looking for other work, the petitioner did not look for work following his termination and began receiving Social Security Disability benefits shortly after the date he was provided light-duty work restrictions. The petitioner underwent a vocational evaluation approximately three years later, and the vocational counselor opined the work injury reduced his earnings capacity.

The appellate court found that, because the petitioner never showed an intention to return to work, although he was capable of returning to work within a 15-pound lifting restriction, vocational rehabilitation was neither mandatory nor appropriate. Further, the petitioner did not engage in a vocational rehabilitation program or self-directed job search following his termination, so he was not entitled to maintenance benefits. In fact, the appellate court noted the Commission found the petitioner abandoned the job market on the date TTD benefits were terminated by Respondent, as he did not seek alternative employment within his restrictions and began receiving Social Security Disability benefits. Therefore, the appellate court held the petitioner was not entitled to maintenance benefits. The court also found the petitioner did not sustain a reduction in earnings capacity due to the work injury because the vocational counselor's opinions were based on insufficient knowledge about the petitioner's prior employment history. Therefore, the appellate court held the petitioner was no entitled to wage differential benefits either.

Beverage v. Illinois Workers' Comp. Comm'n, 2019 IL App (2d) 180090WC

Q: Is an injury that occurs going up/down stairs compensable when the stairs present no defective or hazardous conditions and the petitioner was walking to clock in for his shift?

A: No, it is not compensable because no defective conditions were present.

In *Ashby v. Illinois Workers' Compensation Commission*, the appellate court held in an unpublished decision that a petitioner did not sustain an accident that arose out of employment when he fell down stairs as he was going to clock in for his work shift. The petitioner injured his neck, back, and head when he fell up the stairs at Respondent while going to clock in. The petitioner testified that the stairs were wet from the rainfall outside, but conceded was not carrying anything or in a rush. The petitioner also testified he was "instructed" to use the front stairway to clock in and clock out. However, Respondent's witness testified the stairs were dry, and that there was no company rule that required employees to take the stairs to clock in or clock out. Respondent's witnesses also testified the petitioner's boots were untied when they approached him shortly after the fall. The petitioner also testified the general public was not allowed to use the stairwell where he

fell, but Respondent's witnesses testified customers regularly go upstairs for various reasons.

The appellate court held that the petitioner's injury was "in the course of" employment because he was on Respondent's premises just after he entered the workplace to clock in. However, the court held the injury did not "arise out of" employment because traversing stairs was not an employment risk and the stairs where he fell were not defective, noting the Commission rejected the petitioner's testimony that the stairs were wet. As such, the appellate court held this was a neutral risk where the petitioner was not exposed to a risk to a greater degree than the general public because he was not carrying anything or in a rush when he fell. In short, the court found no evidence the petitioner was more likely to slip and fall while traversing the front staircase on Respondent's premises than he or any other member of the public would be likely to fall while traversing any other stairway.

Ashby v. Illinois Workers' Comp. Comm'n, 2019 IL App (3d) 180319WC-U

Q: Is an injury compensable when the petitioner was involved in a motor vehicle accident while traveling to her doctor's appointment for authorized treatment related to a compensable injury – but at her own chosen treating doctor's facility?

A: Probably not, especially because the petitioner chose her own treating doctor.

In *Gaytan v. Illinois Workers' Compensation Commission*, the appellate court held in an unpublished decision that the petitioner's injury did not arise out of employment when she was injured in a motor vehicle accident traveling to a doctor's appointment for her work injury. The petitioner injured her elbow and received treatment authorized by Respondent. The petitioner did not speak English and Respondent provided a translator for her during her medical appointments. The petitioner scheduled her own follow-up appointment at her own selected provider for the work injury, and while driving to the appointment following the translator, the petitioner was involved in a vehicular accident in which she sustained injuries. The petitioner attempted to argue that her injury was a condition of her employment because the translator had "instructed" her to follow her and the translator was also provided by Respondent, but the appellate court found no merit in that argument.

Instead, the appellate court determined Respondent did not require the petitioner to attend the appointment and found that the petitioner's act of following the translator to the appointment was not a condition of her actual employment. Therefore, the employee was not injured as a condition of her employment merely because she was following the Respondent-provided translator to a follow up appointment for which her employer was unaware. The appellate court further held that Respondent did not require or demand the petitioner to receive medical treatment from this particular provider, but merely suggested this provider out of a list of many providers. As such, the court held the petitioner's motor vehicle accident did not arise out of employment.

Gaytan v. Illinois Workers' Comp. Comm'n, 2019 IL App (3d) 180141WC-U

Q: Is an injury compensable when the petitioner slipped and fell on ice in an employer-owned parking lot regardless of the fact the general public is exposed to that same risk of falling on ice?

A: Yes, regardless of that fact.

In *Smith v. Illinois Workers' Compensation Commission*, the appellate court held in an unpublished decision that the petitioner's injury did arise out of employment when he slipped and fell on ice in Respondent's parking lot. The petitioner sustained injuries while walking out to her car parked in Respondent's parking lot after her shift had ended. It had been snowing that day and Respondent had previously plowed the lot and salted it. The parking lot where the petitioner fell was used by both employees of Respondent and the general public, such as visitors. The arbitrator originally awarded compensation, but this decision was revered by the Commission because it held the petitioner was not exposed to any greater risk than members of the general public due to the lot being used by both groups. The circuit court then reversed the Commission and reinstated the arbitrator's award. However, the appellate court held that the petitioner's injuries did arise out of employment and awarded benefits, upholding the circuit court's decision.

The appellate court used a two-prong analysis for this slip-and-fall on ice case where the petitioner injured herself on Respondent's parking lot. The first inquiry was whether the petitioner's injury occurred on Respondent's parking lot, which it did. Given this, the court then turned to its second inquiry, which was whether the injury was due to some hazardous or defective condition on Respondent's premises. The appellate court found the ice and snow on Respondent's premises did constitute a hazardous condition. Given these two prongs being satisfied, the court held the injury arose out of employment and gave no further consideration as to whether the petitioner was exposed to a risk beyond that of the general public. As such, the court generally held that snow or ice in Respondent's parking lot constitutes a hazard or defective condition, creating an increased risk.

Smith v. Illinois Workers' Comp. Comm'n, 2019 IL App (3d) 180251WC-U

Q: Is an employer required to maintain workers' compensation insurance, and considered an "employer" under the Act when they hired the petitioner, a subcontractor, to remodel a home, provided him with materials and directed him how to perform his job duties?

A: Yes, all of these factors constitute "control" over the petitioner's job duties.

In *Tomasz Maj* v. Chris Home Remodeling, Inc. & Krzysztof Cholko, the Commission held that Respondent, a home remodeling business, violated the Illinois Workers' Compensation Act by not purchasing and maintaining workers' compensation insurance when the petitioner sustained injuries in an explosion at a job site. The petitioner sustained injuries to multiple body parts while working with a welding torch on a job site that involved remodeling. Respondent provided the equipment used by the petitioner,

assigned the work for the petitioner to perform and determined what days he would work. Respondent could terminate the petitioner from the project at any time. Respondent was hired as a general contractor to perform remodeling work on the site where the explosion occurred. Respondent knew that it was required to carry workers' compensation insurance if he had any employees but decided not to purchase any because he thought everyone working on the project was a subcontractor, including the petitioner. Respondent paid the petitioner in cash and the petitioner only came in when Respondent instructed him to do work.

The Commission found that Respondent was engaged in an extra hazardous business, namely, the remodeling of any structure and, therefore was subject to the Act's requirement to provide workers' compensation insurance to its employees. The Commission further found that the petitioner was an employee of Respondent because it provided the tools, materials, supplies, and transportation to the job site, assigned the work the petitioner was to perform, determined what days he could work, and could fire him from the project at any time. All of these factors evidenced an employment relationship between the parties. Because Respondent knowingly failed to provide workers' compensation insurance, it could not be afforded the benefits and protections under the Illinois Workers' Compensation Act and can be sued in civil court.

Tomasz Maj, *Petitioner*, 18 IL. W.C. 03176 (Ill. Indus. Com'n Jan. 4, 2019)

Q: Is an alleged injury compensable when the petitioner cannot recall the date of injury or what caused his current condition of ill-being despite having consistent symptoms of ongoing shoulder pain following the alleged injury date?

A: Probably not.

In *Daniel Johnson v. Southern Illinois University*, the Commission held that the petitioner's alleged injury did not arise out of employment. The petitioner sustained an alleged work injury while working as a temporary employee on September 15, 2014. He reported to the University's workers' compensation coordinator on September 18, 2014 that he had shoulder surgery and bicep repair 2 years prior and, although he was uncertain what happened, he had right shoulder pain three days prior on September 15, 2014. He worked the following day on September 19, 2014. He completed an Employee's Notice of Injury on September 22, 2014 listing a date of injury of September 9, 2014, but the Supervisor's Report of Injury completed on the same date listed a date of injury of September 15, 2014.

The Commission affirmed the arbitrator's decision denying that the petitioner's injury arose out of employment because petitioner put forth several date of injury on various forms and in the medical records. Furthermore, the petitioner told the University's workers' compensation coordinator he was not certain what caused his right shoulder pain. There were also inconsistent mechanisms of injury reported by the petitioner in the medical records. However, at trial, the petitioner could pinpoint the exact moment of the accident, although he couldn't say whether it occurred on September 9, 2014 or September 15, 2014. The petitioner also testified he could not lift his shoulder but

continued to work for 4-10 days for the University after both dates of injury. As such, the Commission affirmed the arbitrator's decision to deny benefits citing an inconsistent timelines and descriptions of the accident by the petitioner. The arbitrator also noted that the petitioner failed to provide a causation opinion to support its claim because the treating physician could not say whether he actually re-injured his shoulder from the prior surgery performed before the alleged work injury.

Daniel Johnson, Petitioner, 15 IL. W.C. 16270 (Ill. Indus. Com'n Jan. 14, 2019)

Q: Is an injury compensable when no mention of the nail alleged to have caused the injury is documented until 18 months after the date of injury?

A: Likely not, especially in light of the medical records and preexisting history of petitioner's uncontrolled diabetes.

In *Jorge Torres Pineda v. Trinity Labor Services*, the Commission reversed the arbitrator's decision and held that the petitioner did not sustain an accident that arose out of employment and did not sustain a compensable injury. The petitioner alleged an injury to his right foot after he stepped on a nail while working for Respondent.

However, the Commission noted that the petitioner provided conflicting testimony about the timeline when he noticed the nail in his shoe, as the medical records' first mention of a nail occurs 18 months after the date of injury. The Commission also found no evidence the petitioner actually injured his foot while working at Respondent because the only employment history provided by the petitioner was at a different employer. The medical records also do not support the proposition that a puncture wound occurred, contrary to the petitioner's testimony that this mechanism of injury happened. The Commission also found it significant that the petitioner had a long history of uncontrolled diabetes. As such, the Commission held the petitioner did not sustain an accident that arose out of employment and that his condition of ill-being was not causally-connected to his alleged accident.

Jorge Torres Pinedo, Petitioner, 13 IL. W.C. 40561 (Ill. Indus. Com'n Jan. 10, 2019)

Q: Is an injury compensable when the petitioner continues to work a very physically demanding job after an undisputed work accident, then later receives treatment?

A. Yes, as long as the work accident caused the need for treatment.

In *Johnie Downey v. Village of Palatine*, the Commission affirmed the arbitrator's finding that the Petitioner sustained a compensable injury to his left shoulder. The Petitioner, a firefighter/paramedic, sustained an undisputed work accident on April 3, 2014, during a realistic training exercise, which involved hanging outside a window. While hanging, the Petitioner felt a popping and burning in his left shoulder and reported the injury that day. The Petitioner finished his shift and continued working his regular shift, which he described as "very physically demanding," until August 6, 2014. The Petitioner was eventually diagnosed with a SLAP tear, among other things, and underwent surgery,

consisting of a SLAP debridement and repair with biceps tenodesis. The Respondent did not dispute the accident but did dispute that the work accident caused the need for the shoulder surgery and associated benefits.

The arbitrator found adequate evidence that the Petitioner experienced pain from the date of injury continuously from that date on, based on the histories in the medical records, report of injury, and co-worker testimony that he continued to ice his left shoulder after the date of injury. Although Respondent presented evidence showing the Petitioner participated in a "Rugged Maniac" race on August 2, 2014, which involved strenuous overhead activities, the Petitioner denied he was able to engage in those types of strenuous activities during the race. And, although the Petitioner did not report his participation to any of the medical providers, the arbitrator noted the Petitioner worked two shifts after this race and the requirements of the race were no more strenuous than his duties as a firefighter/paramedic. The Respondent also presented the Petitioner's Facebook page, on which he posted multiple comments noting his rigorous physical fitness program, including doing multiple pushups and pull-ups, though he indicated he was doing it while accommodating his injury. However, the arbitrator did not find this persuasive. The arbitrator also found the opinion of the Petitioner's treating surgeon more credible than the Respondent's Section 12 IME doctor. Thus, the Commission affirmed the arbitrator's decision that the work injury caused his condition of ill-being and awarded benefits, including medical, TTD, and 16% BAW for PPD.

Johnie M. Downey, Petitioner, 14 IL. W.C. 28250 (Ill. Indus. Com'n Nov. 21, 2018).

Q. Is an injury compensable if a petitioner gets a hand caught in a door with no defects, resulting in a crush injury.

A. Yes, since the door weighed as much as 400 pounds and was an employment-rated risk.

In *Christie Robinson v. State of Illinois / Vienna Correctional Center*, the Commission affirmed the arbitrator's finding that the Petitioner sustained a compensable injury because it was incidental to employment. The Petitioner, a correctional officer, injured her left hand on September 15, 2017, when a steel door slammed shut on her left hand while leaving a room after relieving the visiting room officer of their duties. The Petitioner was diagnosed with a crush injury and x-rays revealed fractures of the terminal tufts of the third and fourth fingers. Of note, the door-in-question is where the general public enters and exits the prison and no defects were present in the door or area, but the heavy door does weigh as much as 400 pounds.

The arbitrator found that an accident arose out of employment because it was incidental to employment and an employment-related risk, as the prison doors are not the types of doors that are used by the general public. Although the arbitrator found this was not a risk to which the general public is exposed (i.e., not a neutral risk), she went on to state that it would still be a compensable case even under the neutral risk analysis because the sheer weight of that type of steel door would have constituted a qualitative increased risk

and the Petitioner's job repeatedly exposed her to this type of door throughout her work day, which would have constituted a quantitative increased risk. Thus, the Commission affirmed the arbitrator's award of benefits.

Christie Robinson, Petitioner, 17 IL. W.C. 30770 (Ill. Indus. Com'n Nov. 21, 2018).

Q. *Does an injury have to be reported in a timely fashion to be compensable?*

A. In most cases, yes

In *Willie Young v. Chicago Transit Authority*, the Commission affirmed the arbitrator's finding that the Petitioner failed to provide timely notice of an accident and failed to prove he sustained an accident that arose out of and in the course of employment. The Petitioner, a bus servicer, alleged he sustained a work-related accident on July 10, 2015, while moving a 55-60 gallon antifreeze jug and allegedly felt a pulling sensation in his low back. An MRI of the lumbar spine showed degenerative changes most significant at L5-S1 with moderate to severe bilateral neural foraminal narrowing. The Petitioner underwent physical therapy and an epidural steroid injection. After obtaining a second opinion and a diagnosis of a lumbar herniated disc, he underwent spinal decompression surgery.

The arbitrator found the Petitioner failed to give notice of his accident to the Employer or Insurer. The Petitioner initially testified he gave notice to his manager when he asked for help to move the antifreeze jug. However, he later contradicted that testimony by specifically denying he actually told his manager he injured his back during his shift and, instead, conceded he only asked for help to move it. The arbitrator found significant that the manager was not called to testify at trial. The Petitioner then testified he notified the Employer on July 11, 2015, when he called another manager on duty "to let him know he wouldn't be able to come in." However, the Petitioner testified specifically that he merely said he wouldn't be able to come in because he "was sick" as opposed to reporting he was having back problems or that he sustained an injury.

The arbitrator found compelling that the Petitioner testified more than once that he did not notify his managers specifically about the alleged accident when he had ample opportunity to do so – especially at the time he was working alongside his manager on the date of injury. Additionally, the Petitioner never presented any testimony that he told his manager(s) about why he needed help or could not come into work the following day, or an explanation as to why he failed to report this injury. As such, this diminished the Petitioner's credibility and showed he did not report the accident in a timely fashion, thus, barring benefits under Section 6(C) of the Act. The arbitrator also noted glaring inconsistencies in the medical records regarding the accident, mechanism of injury, etc. that casted further doubt an accident occurred at all.

Willie Young, Petitioner, 15 IL. W.C. 31771 (Ill. Indus. Com'n Nov. 30, 2018).

Q. Does an employer have to have workers' compensation insurance?

A. Yes

In *Insurance Compliance Division v. Chain-O-Lakes Dental Laboratory, Inc.*, the Commission assessed penalties totaling $850,033.28 against Chain-O-Lakes (the Employer) for failing to have workers' compensation insurance for its 18 employees for a period of 1,717 days between August 24, 2007 and April 25, 2012. Of note, the Commission found the Employer had workers' compensation insurance both prior to and after this period, thereby complying with Section 4(a) of the Act during those times, but that it failed to have workers' compensation during the specified 1,717-day period. The Employer had also previously entered into a compromised settlement agreement with the Insurance Compliance Department regarding its non-compliance but failed to comply with its terms despite being contacted several times by the Department.

Citing Section 4 of the Act, the Commission held the Employer's actions constituted a "willful failure or refusal" to comply with the Act (i.e., maintaining or having worker's compensation insurance) and assessed a $500-per-day penalty for each day they failed or refused to have insurance during that 1,717 day period. Based on the factors to be considered in assessing penalties, the Commission put significant weight on the length of time (1,717 days) that Employer failed to maintain workers' compensation insurance for its up-to 18 employees and the fact it was aware of its obligation to do so, which was shown by its having insurance before and after this specific time period.

Ins. Compliance Div., Petitioner, 11 IL. INC. 504 (Ill. Indus. Com'n Oct. 30, 2018).

Q. Can a workers' compensation case be active after 5 years of "no action"?

A. Probably, if the petitioner can prove they are showing good cause for a continuance.

In *Kazimierz Malik v. MP Trailer Repair, Ltd*., the Commission reversed an arbitrator's decision to deny the Petitioner's Petition for Reinstatement, and reinstated the workers' compensation case. The Petitioner filed an Application for Adjustment of Claim on May 13, 2009 against MP Trailer Repair and the Illinois Workers' Benefit Fund. From 2009 to 2014, no significant action was taken in the case. On March 14, 2014, the arbitrator dismissed the case for want of prosecution, after denying the Petitioner's request for a continuance, noting the Petitioner showed no evidence it attempted to provide locate or proper notice to MP Trailer Repair in the almost-5 years since the Application was filed. Thus, the Arbitrator found that "good cause" was not shown to allow for a continuance of the case because practically no activity had taken place in nearly 5 years.

However, the Commission reversed and found that "good cause" was shown to necessitate the continuance of the case against an uninsured employer due to the added difficulties involving the same. Specifically, the added difficulties included the inclusion of the Attorney General's office, the need to obtain a certificate of no insurance from the Commission's Non-Compliance Department, and serving notice to "oftentimes

uncooperative and/or AWOL party opponents." The Commission disagreed with the arbitrator and determined the evidence showed the Petitioner had been proactive on most, if not all, of these fronts and reinstated the case.

Kazimierz Malik, Petitioner, 09 IL. W.C. 20637 (Ill. Indus. Com'n Oct. 23, 2018).

Q. Can a petitioner request a subpoena for files from the defendant just because they want them?

A. No, documents may only be subpoenaed to be produced at the time and place set for hearing of the cause.

In *Nicole St. Pierre v. La Leche League International*, the arbitrator denied Petitioner's subpoena requesting "all non-privileged materials in the [Insurer's] claim file regarding this petitioner," specifically communications between the claims adjuster at the Insurer and the Petitioner. The arbitrator found the "subpoena plainly failed to comply with the applicable Section 9030.50, Subpoena Practice at the Commission" and that "[t]he subpoena was fatally invalid and defective at the moment it was drafted." Specifically, Rule 9030.50 of the Rules Governing Practice Before the Workers' Compensation Commission provides that witnesses or documents may only be subpoenaed to appear or be produced at the time and place set for hearing of the cause. The Respondent also asserted that there had been no personal service or payment of statutory fee and travel expenses in conjunction with the subpoena. As such, the Petitioner's subpoena request was denied and the Commission ruled it lacked jurisdiction to make a ruling on that issue thereafter.

Nicole St. Pierre, Petitioner, 16 IL. W.C. 00205 (Ill. Indus. Com'n Nov. 21, 2018)

Q. *Is employer A liable for an employee who originally had a compensable claim with employer A, but then sustained additional injuries while working for employer B?*

A. Yes, as long as the additional injuries did not break the chain of causation and the additional injuries would not have occurred but for the original injury.

In *Par Electric v. Illinois Workers' Compensation Commission,* the Appellate Court of the Third District affirmed the Commission's finding that an intervening accident did not break the chain of causation or constitute an independent intervening cause of the Petitioner's original injuries. The Petitioner injured his right arm on June 16, 2014, while working for Par Electric. He was diagnosed with a right shoulder tear due to dislocation and surgery was performed. He was allowed to return to work full duty, without restrictions on March 11, 2015, but was asked to follow-up in 4 weeks, so he was not placed at MMI. On April 1, 2015, and April 3, 2015, the Petitioner injured his right shoulder while working for a different employer, Henkels & McCoy. He was diagnosed with a SLAP tear and underwent another surgery to repair the same – although the treating surgeon also removed a loose anchor from the first operation during this operation. Three separate Applications for Adjustment of Claim were filed for the accident dates.

The arbitrator found Par Electric was liable for medical and TTD benefits through March 11, 2015 (i.e., for the initial date of injury), but that Henkels & McCoy was liable for medical and TTD benefits after April 1, 2015 (i.e., for the subsequent dates of injury). Although the Commission agreed with the arbitrator, holding that the Petitioner sustained three distinct accidents, it disagreed with the arbitrator in its own determination that the two subsequent accidents in April 2015 failed to constitute independent intervening accidents sufficient to break the causal connection from the initial June 16, 2014 accident. Thus, the Commission determined that the Petitioner's current condition of ill-being was causally related to the original June 16, 2014 accident and held that Par Electric was liable for all medical and TTD benefits resulting from the Petitioner's injuries.

The appellate court agreed with the Commission and determined that the subsequent April 2015 accidents did not break the causal connection from the June 2014 accident and did not constitute intervening accidents. The court noted that, under the Act, an employer is only relieved of liability if the intervening event *completely* breaks the causal chain between the original work injury and the ensuing condition of ill-being. In other words, when an employee's condition is weakened by a work-related accident, a subsequent accident, whether work related or not, that aggravates the condition does not break the causal chain and is not an intervening accident sufficient to break the chain of causation from the original work injury. So long as the Petitioner's condition of ill-being would not have resulted "but for" the original injury, the first employer remains liable. Here, the appellate court found the Petitioner's original injury made the Petitioner more susceptible to dislocation (which is what occurred in April 2015) and that the Petitioner had not completely healed from the first surgery. The subsequent injuries caused a condition (a SLAP tear) that was an extension or a natural consequence of the initial injury and condition (labral tear) caused by the June 2014 accident. This opinion was in line with the Petitioner's treating surgeon and in contrast the Respondent's Section 12 IME doctor. In other words, the appellate court found that the Petitioner's dislocation and resultant SLAP tear in April 2015 would not have occurred "but for" the June 2014 accident, which caused the Petitioner to be more susceptible to these types of injuries and conditions.

Par Elec. v. Illinois Workers' Comp. Comm'n, 2018 IL App (3d) 170656WC.

Q. Does an injury arise out of employment if the petitioner slips and falls on a sidewalk while on break?

A. Yes, if there is a hazardous condition on the employer's owned and maintained premise, the injury is work related.

In *Lori Crowder v. Illinois Workers' Compensation Commission*, the Appellate Court of the Fourth District reversed the Commission's decision in holding that the Petitioner did sustain an accident that arose out of employment. The Petitioner, an administrative zone secretary, injured her right ankle on May 1, 2014, when she slipped and fell on a City-owned snow-covered walkway while on her break. The Petitioner was allowed two 15-

minute breaks, which allowed for walking around outside, getting a snack, or purchasing coffee from a nearby Starbucks. The Employer's building had two entrances – one that was open to and commonly used by the general public and another that did not necessarily prohibit the general public from using, but would only open if it was held open or an employee-badge was swiped. On the date of injury, the Petitioner exited the "front door" commonly used by the general public and slipped on the snow-covered walkway connecting the main entrance and the main sidewalk.

The appellate court found that, because the Petitioner's injury was caused by a hazardous condition (i.e., snow) on the Employer's premises, it was immaterial whether this walkway was used by or accessible to the general public. Instead, the appellate court found the injury arose out of employment simply because the injury occurred on the employer's owned-and-maintained premises and was caused by a dangerous or hazardous condition or defect. The appellate court did, however, reject the Petitioner's argument that getting coffee on a lunch break was an act of "personal comfort" that was incidental to her employment, but still awarded benefits because of the foregoing analysis.

Crowder v. Illinois Workers' Comp. Comm'n, 2018 IL App (4th) 180037WC-U.

Q: Does the Illinois Workers' Compensation Act immunize both a borrower employer and a lender employer from further claims?

A: Yes. In *Holten v. Syncreon North America, Inc.* a temporary worker who was employed by a staffing agency filed a personal injury action against Android Industries-Belvidere, LLC (Android). The trial court granted summary judgment for Android (the defendant), as the claimant's claims were barred by the exclusive-remedy provision of the Illinois Workers' Compensation Act. The claimant was hired by Staff on Site and was assigned to the Android site as a forklift operator. The claimant fell from the forklift about two months into his time on the site and filed a claim against Android for workers' compensation benefits. Android told the claimant to file the claim against Staff on Site instead, and the claimant did so, and received workers' compensation benefits as a result. However, after the claimant filed his compensation claim against Staff on Site, the claimant filed a personal injury claim against Android—leading to the case at hand.

The trial court concluded that since the claimant had already received workers' compensation benefits from Staff on Site, he could not also seek benefits from Android. It was also concluded that Android was a "borrowing employer," which meant that it was entitled to immunity under the Act's exclusive-remedy provision. The Court concludes that either the loaning employer or the borrowing employer can be the entity that pays workers' compensation premiums and benefits. Furthermore, the liability between the two parties is joint and several, unless the contract between the two specifies otherwise. Also, the loaning employer may be entitled to reimbursement from the borrowing employer, again, if the contract specifies as such.

The claimant in this case contended that in order for the exclusive remedy provision to apply, there must be a reimbursement requirement within the contract between the two

employers. The court rejects this argument, stating that Section 1(a)(4) explicitly states the reimbursement right already. The loaning employer is "entitled to receive from such borrowing employer full reimbursement for all sums paid or incurred pursuant to this paragraph," absent an "agreement to the contrary." The court also concluded that the claimant had an implied contract between himself and Android, thus making him a joint employee. The court concluded, as such, that summary judgment was properly granted, and the exclusive-recovery provision bars the claimant from further claims.

Holten v. Syncreon N. Am., Inc., 2019 IL App (2d) 180537.

Q: Does an injury incurred by a janitor jumping off of a platform stem from any employment requirement?

A: No. The claimant in *Benson v. Illinois Workers' Comp. Comm'n* was injured when he jumped off of a loading dock because he was told by his supervisor to hurry. When the claimant jumped off of the platform, his foot and leg hit a hydraulic lift, resulting in his foot being fractured. The claimant alleged that jumping off the dock was his routine way of leaving work, and that multiple supervisors had seen him do this.

The primary issue on appeal was whether or not this injury had an origin "in some risk so connected with, or incidental to, the employment as to create a causal connection between the employment and the injury." It was held that the risk of jumping off of a platform was a neutral risk, because it was not reasonably expected to be performed in connection with the claimant's duties as a janitor. As such, the court of appeals affirmed the Commission's finding denying compensation.

Benson v. Illinois Workers' Comp. Comm'n, 2019 IL App (4th) 180702WC-U.

Q: Must an appeal bond be filed in order for the circuit court to have subject-matter jurisdiction review a Workers' Compensation decision?

A: Yes. In *Meijer v. Illinois Workers' Comp. Comm'n,* the appellate court held that an employer must fully comply with the jurisdictional requirements of the Workers' Compensation Act in order for a circuit court to have jurisdiction over the matter. It is held that both the claimant and respondent must strictly comply with ". . .the bond requirements of section 19(f)(2) in order to confer jurisdiction upon the circuit court to review of decision of the commission."

In this case, the employer did not file an appeal bond within the 20-day review period. The employer claims that it received the Commission decision on April 20, 2018, and the court notes that the request for summons and notice of intent were filed on May 9, 2018, which was a timely filing. However, the appeal bond was dated May 3, 2018—but it was not placed in the mail until May 11, 2018, the day after the 20-day review period expired. The court concludes that the employer failed to strictly comply with 19(f)(2), and as such, the claim was dismissed.

Meijer v. Illinois Workers' Comp. Comm'n, 2019 IL App (2d) 180857WC-U.

Q: Does an employer who owns the land where an employee suffered a work-related injury retain the protections of the exclusive remedy provision of the Workers' Compensation Act?

A: Yes. In *Rivera v. Vivit*, the claimant was injured when she slipped and fell in a parking lot owned by her employer. The claimant alleged in a civil action that the employer permitted an "unnatural accumulation of ice and snow" in the lot, and that their failure to maintain the lot in a reasonable safe position caused her injuries. At the circuit court level, the complaint was dismissed because of the exclusive remedy provision of the Workers' Compensation Act.

The claimant alleged that she should be able to sue her employer in his capacity as the owner of the parking lot—however, it was found that the employer's duties as an employer did not different enough from his duties as the owner of the lot for the dual capacity doctrine to apply. The court cites Reynolds *v. Clarkson*, in which a plaintiff worked for an employer and suffered an injury on their land, then recovered Workers' Compensation benefits. 263 Ill. App. 3d 432 (1994). Then, the plaintiff attempted to bring a civil suit against the boss—however, the *Reynolds* court found that "As an agent of Clarkson, defendant's duties as plaintiff's boss were to furnish him with a safe place to work which is related to the common law duty of the landowner to provide safe premises and does not cause loss of immunity from suit."

The court applied the same reasoning as *Reynolds* here, stating that the claimant has a duty to keep his premises reasonably safe, and also has duties to furnish a safe workplace for his employees. The court finds that these two obligations are so closely related as to bar liability under the dual capacity doctrine. As such, dismissal of the complaint was appropriate.

Rivera v. Vivit, 2019 IL App (1st) 182196-U.

Q: Can an employer be sanctioned for failing to pay benefits to a deceased claimant's child who has been adopted by his ex-wife and her new husband as well as for failing to acknowledge that the claimant was an employee?

A: **Yes.** In *Ravenwood Disposal Services*, the claimant, Raul Laguna, died while working. He was pinned between two vehicles while at work. Raul's minor son, Sergio Lagunas (now Sergio Delgado), was found by the Commission to qualify as a dependent. Because Sergio was found to be a dependent, he was awarded death benefits and weekly benefits until the age of 18, or 25 if he goes to college. Additionally, the Commission found that the claimant was an employee of the employer, and that the employer had to pay the claimant's medical fees.

At the Commission's hearing, Sergio testified that he viewed Maria (his mother) and Isidro (Maria's new husband) as his parents. Sergio stated that he did not see Raul often, but that Raul did pick him up from school a few days per week and gave him money. The arbitrator found that the employer had been unreasonable in arguing that no employment

relationship existed, because the president of the company considered him to be an employee, and the company exerted control over the claimant's work. The arbitrator also concluded that because Sergio was the claimant's dependent when the claimant died, the claimant was legally required to support him—additionally, it was noted that the claimant would regularly pay child support. The arbitrator ordered the claimant to pay the claimant's medical bills, awarded Sergio death benefits and weekly benefits, and imposed penalties pursuant to 19(k) and 19(l) of the Illinois Workers' Compensation Act, for attorney fees and costs.

The appellate court concluded that Sergio's adoption by Isidro may have prevented Sergio from getting certain benefits on the basis that Raul was "legally obligated" to support him, but this did not prevent Sergio from claiming benefits on different grounds. Also, the Workers' Compensation Act does not have any language that terminates Sergio's right to benefits simply because he was adopted.

Given all of this, the appellate court agreed with the commission that sanctions were appropriate. The court states that 19(l) penalties are like late fees, and that the assessment of such a penalty is mandatory if payment is late and the employer cannot justify the delay in payment. Here, the court decided not to disturb the Commission's decision, as it was a factual determination. On the other hand, 19(k) of the Act allows penalties for "any unreasonable or vexatious delay of payment or intentional underpayment of compensation." Essentially, payments are awarded under 19(k) for instances of bad faith. In this instance, the court found it unreasonable that the employer challenged the claimant's status as an employee and also failed to pay the claimant's medical expenses. As such, the court concluded that the failure to pay the medical expenses was in bad faith, and that as such, sanctions were appropriate.

RAVENSWOOD DISPOSAL SERVICES, Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION et al. (Sergio Lagunas, n/k/a Sergio Delgado, by His Parent/Guardian Maria Diaz, Next of Kin of Raul Lagunas, Deceased, Appellee)., 2019 IL App (1st) 181449WC.

Q: Does the presence of a preexisting scaphoid nonunion make a workplace injury noncompensable?

***A:* It depends.** In *Sarah Hedtkamp, Petitioner*, the claimant had been diagnosed with scaphoid nonunion at the age of 16, but had been largely asymptomatic until her injury in 2013. Several different doctors testified, and even the doctor who was testifying on behalf of the employer conceded that there was no evidence that the claimant experienced symptoms prior to the injury at work. There was no debate as to whether or not the work accident aggravated her condition—it was conceded by the employer that it did. The accident in question occurred when the claimant was pushing a box onto a conveyer belt (which she was instructed to do by her employer) and the box got stuck, causing her wrist

to hyperextend. One doctor opined that the aggravation was persistent, and the other doctor opined that it was temporary.

Ultimately, the Commission concluded that the doctor who testified that the claimant's condition was best characterized as a persistent aggravation. This conclusion was reached because the claimant alleged multiple ongoing complaints, and the medical records also pointed toward this being the case. As such, it was established that the claimant's condition was causally related to the work accident.

The Commission determined that Section 8.1b(b) of the Workers' Compensation Act applied when determining the level of disability for the claimant. This meant that "Section 8.1b(b) requires permanent partial disability be determined following consideration of five factors: (i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability." The commission notes that the claimant was terminated shortly after her work incident, and did not seek out another job as a line worker. The commission also notes that the claimant was 24 years old at the time of injury, and will face disability for a longer period of time than an individual who is older than her.

Ultimately, the Commission overturned the decision of the arbitrator, and found that the claimant sustained permanent partial disability of 35% to her right hand, and awarded the claimant with compensation. This was based on findings that the claimant's wrist range of motion was largely reduced, and that her wrist regularly throbs when the weather is cold and damp. She also stated that she has difficulty lifting her youngest child, and can't play sports with her children either.

Sarah Hedtkamp, Petitioner, 13 IL. W.C. 37697 (Ill. Indus. Com'n Jan. 18, 2019).

Q: Is compensation proper for a claimant who worked for 23 years in the finish department at an auto shop?

A: Yes. The claimant in *William Black, Sr., Petitioner* worked in the finish department of a Firestone auto shop. The petition's job was to trim, buff, and repair tires. The arbitrator found that the claimant was not entitled to compensation. However, the Commission reversed, finding that the claimant had proven that he sustained accidental, repetitive trauma-type injuries to his right shoulder.

The claimant testified regarding repetitive and forceful activities that he had to conduct as a result of his 23 years of employment, and stated that his shoulder condition manifested in 2012 while ". . .performing extensive buffing activity." The Commission also relied on the opinions of two doctors who examined the claimant.

The claimant was awarded temporary disability from April 2013 to February 2015, and also found that the claimant was entitled to medical expenses. Furthermore, the claimant was also awarded a credit for money paid on account of his injuries. The Commission

also noted that the claimant currently works a light duty job for the employer, and that he was unable to return to his prior job following his injury.

William Black, Sr., Petitioner, 13 IL. W.C. 19986 (Ill. Indus. Com'n Jan. 23, 2019)

Q: Is a claimant who has to go up and down stairs that are in poor condition and are not open to the general public exposed to a qualitatively greater risk than the general public?

A: Yes. The claimant in *Mima Castillo, Petitioner*, worked for a healthcare facility, in the kitchen. For her job, she had to cook, clean the kitchen, restock the kitchen, and prepare food. Many of her supplies were located in the basement, and as such, she had to regularly go downstairs in order to get different supplies. The claimant's foot got stuck on a rubber mat that was placed on the step, and fell forward. The claimant testified that the railing was loose, and that she couldn't stop herself from falling.

One of the key issues in this case was whether or not the claimant's injury arose out of the course of employment. Nothing in the record suggested that the claimant had prior medical conditions related to her injuries. The stairs were found to be not open to the general public, and were found to be in an old and deteriorated condition. Furthermore, the stairs are steep and narrow, and the stairway is not well lit. The Commission found that the claimant was exposed to a qualitatively greater risk than the general public at large after viewing the photographs of the stairway. It concluded that the stairway poses a hazard greater than that which is posed to the general public. Additionally, the Commission noted that many of the supplies which the employees of the employer had to get to complete their job duties were in the basement. Based on these findings, the Commission concluded that the claimant's injuries arose out of her employment.

Mima Castillo, Petitioner, 16 IL. W.C. 25665 (Ill. Indus. Com'n May 29, 2019).

Q: Is an employer unfairly prejudiced if a claimant does not provide notice to them until after treatment is completed and the claimant is back at work at full duty?

A: Potentially, yes. In *Richard Holley, Petitioner,* the claimant had an NCV in 2011 which was consistent with carpal tunnel, and a doctor treated the condition conservatively. Then, in 2015, the same doctor performed surgery on the claimant without performing any additional nerve conduction studies. The Commission concluded that the employer was prejudiced because it was not granted the opportunity to order testing in order to confirm the diagnosis of this one doctor.

The Commission notes that the claimant's first surgeries were performed more than 45 days before the claimant provided his employer with notice, but a second set of surgeries were within the 45 day requirement set out by the Workers' Compensation Act. The Commission found that the second set of surgeries did not prejudice the employer, but the first did. As such, the Commission affirmed the arbitrator's awards associated with

the second set of surgeries, but reversed the awards associated with the first set of surgeries.

Richard Holley, Petitioner, 16 IL. W.C. 20685 (Ill. Indus. Com'n May 28, 2019).

Q: Should a claimant's spoliation claim succeed when they have failed to issue a subpoena seeking employment records for over 10 years?

A: No. In *Raisa Ader, Petitioner* the claimant was injured in 2006. However, she did not file a subpoena for her employment file until 10 years later. Under both federal and Illinois law, employers are only required to keep employment records for three years. The Commission compares this case to the *Chidichimo* case, in which it was concluded that a claimant is not entitled to a favorable presumption, and the employer is not subjects to sanctions, based on the destruction of documents. *See Chidichimo v. Indus. Comm'n,* 278 Ill. App. 3d 369, 374, 662 N.E.2d 611, 614 (1996). Furthermore, *Chidichimo* also states that claimant need to take some steps in order to protect documents from routine deletion. *Id.*

The Commission concludes that like in *Chidichimo,* the claimant failed to take steps in order to protect the documents. The Commission states that it is "ludicrous" to argue that there should be a presumption against the employer for the claimant's own failure to secure records.

The claimant also tries to argue that the missing evidence rule applies. According to the commission, "The missing evidence rule holds where a party fails to produce evidence in its control, a presumption arises that evidence would be adverse to that party." This, as well, was found to not apply, because the employer had a reasonable excuse for failure to produce the evidence, and that, furthermore, the evidence was equally available to the claimant as well. The claimant, according to the Commission, could have easily obtained that records via a Commission subpoena. However, the claimant elected to wait for 10 year and issue a subpoena. The Commission concludes by stating that it was unreasonable to expect the employer to hold onto their records indefinitely, and that as such, the claimant's spoliation claim failed, and compensation was denied.

Raisa Ader, Petitioner, 09 IL. W.C. 37078 (Ill. Indus. Com'n May 28, 2019).

Q: Can a claimant be awarded the charges billed by a doctor who drafts a standard report and charges the claimant for it?

A: No. In *Joseph Edwards, Petitioner* one of the claimant's doctors charged the claimant an additional fee for writing a standard report that would normally be generated in the course of treatment. The Commission finds that it is permissible for a provider to charge an additional fee for a special report, but that it is impermissible for a provider to charge an additional fee for a standard one. The arbitrator found that the medical reports that were admitted into evidence for one of the doctors were merely standard reports, and that as such, the employer was not liable to pay them.

Joseph Edwards, Petitioner, 16 IL. W.C. 24420 (Ill. Indus. Com'n May 22, 2019).

Q: Does the development of a torn meniscus as a result of going up and down stairs and ladders regularly at work rise to the level of a compensable injury?

A: Sometimes, yes. In *Nathan Williams, Petitioner,* the claimant would regularly have to climb ladders and stairs, as well as climb and descend spherical tanks with a spiral and angled staircase. In 2013, the claimant was descending one of the tanks, and the claimant felt weakness in his knee—this caused him to feel as if he needed to go down the stairs sideways. The Commission found that the claimant sustained an accident while coming down the staircase and pivoting down these steps.

The claimant confirmed that the work area was not accessible to the public, and that even employees of the respondent had to get permission to climb to the top of the tank. Following the claimant's shift on the date of the injury, he felt pain and stiffness. It was found that the claimant had a torn meniscus, and one doctor testified that all of the ". . . climbing, twisting, pivoting, squatting, [and] awkward positions" could cause such an injury.

The arbitrator previously held that the injury was not work-related, but the Commission reversed this decision. The claimant underwent surgery, but he missed a very small amount of work, and he was compensated through short-term disability while he recovered. The Commission found that the claimant was able to complete his job duties prior to the date of the injury, and then was unable to do so—as such, a causal relationship existed between the accident in question and his meniscal tear. The respondent was ordered to pay temporary total disability benefits for the dates which the claimant was unable to work, and also the Commission found that the claimant sustained a 12.5% loss of use of his right leg.

Nathan Williams, Petitioner, 14 IL. W.C. 3224 (Ill. Indus. Com'n May 22, 2019).