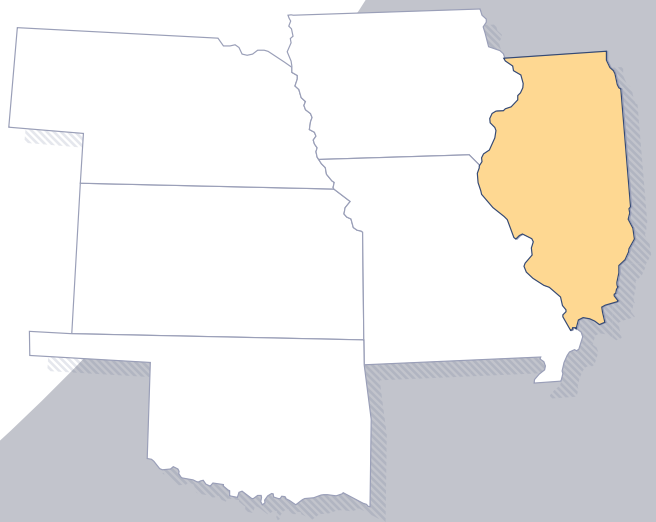
Workers' Compensation Reference Guide

Illinois



ILLINOIS WORKERS' COMPENSATION

I. JURISDICTION

A. Illinois jurisdiction is appropriate when:

1. The petitioner is injured in Illinois, even if the contract for hire is made outside of Illinois;
2. 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; or
3. 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.

B. Accident arises out of the employment when there is a causal connection between the employment and the injury.

C. Three types of risks include: (1) an employment risk; (2) a personal risk; or a (3) neutral risk

1. *McAllister* Supreme Court decision held everyday activities can be considered an "employment risk" and therefore compensable without utilizing a "neutral risk" analysis.

D. Injury must be traceable to a definite time, place, and cause.

E. *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.

1. 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.

1. 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

A. Statute of Limitations

1. Petitioner must file within three years after the date of accident, or two years after the last compensation payment, whichever is later.
2. 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.

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 may choose 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 they need 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.
   a. 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.
    a. 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 in the modified job.
2. Applicable when the employee is working light duty on a part or full-time basis.

F. Permanent Partial Disability (PPD)

1. 60% of AWW
2. See 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 01/01/24, the Illinois minimum wage is higher ($14/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, neck, head, and mental/psych 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 repetitive trauma 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 (or acute 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 can prove greater disability by clear and convincing evidence.
2. If the petitioner can 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. Must be to hand, head, face, neck, arm, leg (only below knee), or chest above the armpit line.
2. Maximum amount is 150 weeks if the accident occurred before 07/20/05 or between 11/16/05 and 01/31/06.
3. Maximum amount is 162 weeks if accident occurred between 07/20/05 and 11/15/05 or on or after 02/01/06.
4. Disfigurement rate is calculated at 60% of AWW.
5. 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 $500,000 or 25 years of benefits, whichever is greater.
    a. Burial costs up to $8,000.

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 or a self-direct job search.
4. Two common situations:
    a. When petitioner is undergoing formal vocational rehabilitation or a self-directed job search) and has been placed at MMI, maintenance picks up (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.
   1. The PPP only applies in cases where the PPP was already approved and in place at the time of the injury.
   2. 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.
   1. 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(s) 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 signed in advance
3. Records of Prior Claims - determine if a credit allowed
   a. 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, meals, and wages from days of work missed
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 5 days of the status call date).
    a. Cases that are more than three years old are referred to as "above the redline," 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.
    a. This request must be served on opposing counsel 15 days before the status call.
    b. At the status call, the attorneys will select a time to pre-try the case.
    c. If the parties have already pre-tried the case, the parties will select a time to try the case.
4. 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.
5. A pretrial conference (Request for Hearing) can be requested by either party prior to the start of a trial.
    a. 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.
    b. Arbitrators require that a case be pre-tried prior to setting any case for trial.
6. 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.

7. 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 automatically.
    a. Future medical benefits 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.
    a. 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

1. For accidents *before* September 1, 2011, if the court finds that accident occurred because of intoxication then injury is not compensable.
    a. Intoxication not per se bar to workers' compensation benefits.
    b. Intoxication will preclude recovery if it is the sole cause of the accident or is so excessive that it constitutes a departure from employment.
2. For accidents on or after September 1, 2011, the Amended Section 11 of the Act provides that no compensation shall be payable if:
    a. The petitioner's intoxication is the proximate cause of the petitioner's accidental injury.
    b. At the time of the accident, the petitioner was so intoxicated that the intoxication constituted a departure from the employment.
    c. 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.
    d. 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

A. Covers slowly developing diseasesthat do not arise out of an identifiable accident or occurrence but not repetitive trauma.

1. 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.”
2. Exposure can be for any length of time (even if very brief).
3. 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).
4. Petitioner must prove he was exposed to a risk beyond that which the general public experiences.
5. Applies only to diseases that are “slow and insidious”
   a. e.g., kidney ailment cause from repetitive exposure to liquid coolant.
   b. 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—Landmarkcase: *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 recover 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.

1. 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: Does an injury "arise out of employment" when the employee is performing everyday activities such as bending, stooping, etc. that are connected to or reasonably expected to be performed in fulfilling his duties?

***A*. Yes, and compensability should be analyzed under the "employment" risk analysis (instead of the "neutral" risk analysis) if the bodily movements are connected to fulfilling their job duties, generally speaking.**

The claimant, Mr. McAllister, injured his right knee while at work. Specifically, the Claimant was looking for a pan of carrots that may have been left in the walk-in cooler. In the cooler, he knelt on both knees to search the top, middle, and lower shelves. As he stood up, he felt his right knee pop. The knee then "locked up" and he was unable to straighten his leg. Soon after, he informed his boss of the incident and his boss then drove him to the emergency room. This wasn't the first time he injured his right knee, however. In August 2013 the Claimant injured his right knee and underwent surgery to repair his injury. The Claimant received workers' compensation benefits, and after he had recovered, returned to full-time work duties.

Initially the claimant was awarded benefits. The Arbitrator found "that claimant's act of looking for the misplaced pan of carrots in the walk-in cooler was an act the employer reasonably could have expected of claimant to perform in order to fulfill his duties as a sous-chef." However, the Illinois Workers' Compensation Commission found that the injury did not "arise out of the claimant's employment" and reversed the decision. The Cook County Circuit Court affirmed the Commission's decision, and the Appellate Court, Workers' Compensation Division similarly affirmed the judgment. The Illinois Supreme Court agreed to hear the case.

There are three categories of risk:

1. Risks distinctly associated with the employment;
2. Risks personal to the employee;
3. Neutral risks which have no particular employment or personal characteristics.

The Court followed through the first step of risk analysis in determining whether the claimant's injuries arose out of an employment related risk. The Court found that the Claimant's injury did arise out of an employment related risk because the acts that caused his injury "were risks incident to his employment because these were acts his employer might reasonably expect him to perform…" Because the employee was responsible for arranging the walk-in cooler, the Court stated that he had a duty to find misplaced food that would have been in the cooler.

The court affirmed the *Caterpillar Tractor* test for analyzing whether an injury "arises out of" a claimant's employment when the claimant is injured performing job duties that involve common bodily movements or routine "everyday activities." If the risk of injury falls

within one of the three categories of employment-related acts, then it is established that the injury "arose out of" the employment.

McAllister v. Illinois Workers' Compensation Commission, 181 N.E.3d (Ill. 2020)

Q: If a traveling employee falls downstairs while at work, does the injury arise out of and in the course of his or her employment?

***A:* Most likely, yes.**

The Claimant worked for the Town of Cicero. Every morning at 7:30 and throughout the day, he would visit the town hall to retrieve his work phone and download his assignments for the day. To access his office, he would use the south stairwell. On July 2, 2018, the Claimant was leaving his office after retrieving what he needed for the workday. As he exited the building to access his Cicero-provided vehicle, he began descending the south stairwell as usual when his right foot slipped off the edge of the second-floor landing, causing him to fall down the stairs. As he fell, the right side of his body, right side of his head, his right shoulder, neck, back and left shoulder became injured.

A traveling employee is one who is required to travel away from an employer's premises in order to perform their job, making travel an essential element of their job duties. Here, traveling to town hall to retrieve his work phone, download his assignments, and obtain his Cicero-provided vehicle were all part of his job duties as a traveling employee. On the day of the accident, the Claimant had already picked up his work phone and downloaded his assignments when the accident occurred. Ultimately, the Court explained the Commission's finding that the employee descending downstairs after retrieving the phone and downloading his assignments was reasonable and foreseeable and incidental to his job as a blight inspector. As such, the Commission's decision was affirmed and the employee's injuries were determined to arise out of and in the course of his employment.

Town of Cicero v. Illinois Workers' Compensation Comm'n (Michael Iniquez) 2024 IL App (1st) 230609WC (April 2024; unpublished)

Q: If a Claimant is injured at work and completes treatment for that injury, but alleges he remains in pain and waits months to seek additional treatment, is the amount of time Claimant waited to receive treatment given significant weight?

***A:* Yes, by delaying additional treatment after undergoing treatment sanctioned by the Employer, the Court explained that the temporal gaps significantly undermined Claimant's credibility.**

While working as a shipping and receiving clerk, Claimant was trying to pull orders and fell from a ladder. As he fell, his right foot became caught between a wall and two pallets, causing him to fall backwards with his foot trapped, injuring his right ankle. He was given crutches and an air cast by an urgent care center, which according to Claimant caused him to walk with his right foot "splayed to the right" which caused issues with his knees and then his hips. Claimant stated his right knee hurt first, and he compensated by putting more weight on his left leg. Eventually, his left knee began to hurt more. After a ligament

reconstruction of his right ankle and physical therapy, Claimant returned to work. Seven months later, he was prescribed a custom orthotic, and underwent injections for hip pain, which reportedly did not help. Soon he learned that both hips demonstrated labral tears. Of note, Claimant had surgery in 1997 for a herniated disc, which Dr. Chilelli (who had given him hip injections) believed was the cause of his symptoms. Claimant then saw Dr. Burgess for a second opinion on his ankle as he had been experiencing continuing pain. Dr. Burges found that Claimant had mild ankle arthritis, instability, and possibly an osteochondral lesion. A year later he returned to Dr. Burgess complaining of knee and hip pain and Dr. Burgess agreed that Claimant should continue using the brace he had been using for the last few years and that there was a compensatory mechanism given the altered gait he presented with, therefore opining that the condition of Claimant's knee and hip were causally related to his work accident. A Dr. Vora examined Claimant on behalf of Employer who diagnosed Claimant with anterior ankle impingement with osteophyte, medial gutter osteophyte, and early ankle arthritis. He explained that these were chronic degenerative conditions that could have been aggravated by the accident and that they were not caused by the accident. Dr. Vora also stated Claimant was not at MMI. Of note, Dr. Vora could not define what a reasonable degree of medical certainty was and described it as more than 51%. Dr. Nho, another doctor for Employer examined Claimant stating that there was no causal relationship between Claimant's reported knee and hip pain and his work injury because the pain began about five years after the original injury. He also opined that claimant was at MMI as of Feb. 25, 2019. The arbitrator awarded Claimant PPD benefits but denied his claim for medical expenses and prospective medical expenses.

After the Commission and Circuit Court of Kane County denied Claimant's claims for compensation for additional injuries and medical expenses, Claimant appealed to the Appellate Court of the Second District.

The Claimant asserted that the Commission created a new doctrine by finding the fact that Claimant did not seek treatment for 7 months following his full duty return to work is an unwarranted assault on his credibility. The Court indicated that this was in no way an act of creating a new doctrine, but simply drawing a factual inference. Ultimately, this understanding of the temporal gaps benefits defenses of claims in which the Claimant alleges continuing injury after returning to work full duty, as neither the Commission, nor the Court of Appeals, found the arguments of the claimant persuasive in any way.

Osman v. Illinois Workers' Compensation Comm'n 2024 IL App (2d) 230180WC

Q: If a Claimant's injury is considered a non-scheduled loss, does it preclude recovery in other cases per the statute?

A: No, recovery in other cases is not precluded.

Claimant was working as a longwall shear operator until November 5, 2016, the date of the accident. While working for his employer he became "caught in between the 20-ton chunk of steel equipment and the coal block, and it squished him in the stomach to the

point of passing out." His injuries included damage to his spine, hip, abdomen, permanent blindness in both eyes, and to his head (anxiety, depression, and PTSD). These injuries required Claimant to undergo numerous surgical procedures-many of which were very serious and invasive.

The decision of the Illinois Workers' Compensation Commission was affirmed by the Circuit Court of Franklin County, awarding the claimant benefits. Employer appeals.

The Court followed the reasoning of *Beelman Trucking* in which the Court held that the words "total" and "permanent" do not indicate a maximum benefit or a cap on benefits for injuries sustained in a single accident.

Ultimately, the court explained that it would be against Supreme Court precedent to leave additional losses uncompensated where the additional losses above and beyond the specific case of loss of two member increased the Claimant's actual disability and further impaired the Claimant's earning capacity. The Court held that the Act permits an employee to recover for the loss of two members under section 8€(18) as well as to recover additional non-scheduled losses under section 8(2)(d).

American Coal v. Illinois Workers' Compensation Comm'n 2024 IL App (5th) 230815WC

Q: If a Claimant has a bad back with previous known injuries and could have reinjured the back with normal daily activities, but presents evidence of new symptoms following a workplace injury, is the employer still liable to compensate?

A. Most likely, yes.

A police officer was responding to a domestic violence call where he was required to essentially wrestle a resident to the ground for roughly 3-5 minutes. During this altercation, the Officer alleged to have injured his back, reporting pain unlike any experienced previously. Of note, the Officer had long standing preexisting back pain and a softball injury that had occurred months before the accident date. In fact, he had been given an injection only weeks before the accident date. Employer presented conflicting medical opinions of Dr. Hsu and Dr. Racenstein. Hsu opined that the Officer sustained a temporary injury on the accident date which resolved shortly after and his need for surgery did not relate to the work accident. Dr. Hsu and Dr. Racenstein both opined that there were no significant changes to the MRIs taken of the Officers back before and after the accident. Following a softball injury he had received an MRI, and another after the accident in December. Alternatively, the Commission found more persuasive the opinions of Dr. Karahalios and Dr. Ghaly. Dr. Ghaly's records reflected his recommendation of surgery because of the Officer's increased disc herniation. Dr. Karahalios recommended surgery, in part, because of the Officers new left sided symptoms.

The Commission found claimant sustained an injury that arose out of his employment. The Circuit Court found claimant sustained an injury that arose out of his employment. Appellate Court (2 Dist.) Workers' Compensation Commission Division affirmed the Commission and the Circuit Court.

The Commission's ruling was affirmed. Even though evidence demonstrated that the Officer's back condition could be triggered by activities of normal daily living, the evidence demonstrated that the Officer's back condition was aggravated when he attempted to restrain an individual at work, and that his pain and symptoms worsened after the accident. "The evidence demonstrated that the claimant's low back condition was caused, in part, by his act of restraining an individual at work, not an activity of daily living."

Excerpt from:
Howard Ankin, City of Aurora v. Illinois Workers' Compensation Commission, Workers' Compensation Law Newsletter, Illinois State Bar Association, Vol. 61 No. 4 (April 2024).

> "Employer challenged the decision as a Sisbro exception, feeling it proved the officer's health was so deteriorated that any normal activity of his is an overexertion. Here, the employer showed its employee was actively treating for a softball injury and had just received two injections and was scheduled to be back to the pain doctor at the time of the work accident. Surgery was already prescribed. Strongly advocating that the employer was not responsible to pay for the surgery as related to a pre-existing condition and/or a pre-existing condition that was so symptomatic that any turn or twist would have caused the need for surgery. The employer retained two experts advocating this point. Thus, illustrating that this City of Auora case shows the limitation or exception to Sisbro as to causation is such a high-water mark to achieve that it is only theoretical and virtually impossible to prove as a defense under Illinois law."

City of Aurora v. Illinois Workers' Compensation Comm'n, 2024 WL 327214 (Ill. App. 2 Dist., 2024)

Q: Does a Claimant lose credibility if he waits until after being terminated to report a workplace injury.

A: Yes. Claimant was a truck driver who alleged two injuries. Claimant alleged first he was injured while lifting heavy equipment on May 1, 2021 causing hernia/abdomen injury. Second, Claimant alleged that he had injured his back when falling backwards while getting out of his truck on February 2, 2022. Neither of these incidents were reported, even though Claimant was informed of the processes and importance of reporting injuries during orientation and, he himself was a supervisor that others could report injuries to. Claimant did not seek treatment until February 25, 2022. He was terminated from the company on February 16, 2022 for theft from the company through the misuse of his company credit card.

Claimant was not credible because he did not report the injury until after he was retaliated.

Jason Coca v. B&P Enterprises, Inc.

Q: If a Claimant is injured at work but does not report it or seek treatment until after vacationing and spending a period of time off work, will their credibility remain?

A: Most likely, no, especially when the injury is serious.

On December 17, 2017, Claimant was a pilot required to conduct pre and post-flight inspection routines. While performing an inspection, she slipped on deicing fluid, causing her to fall and injure herself. She continued working through this shift and did not report the injury to her employer. She worked another couple of days before going on a holiday break. During her break she went on vacation with her family. The accident was first reported 19 days after it occurred, on January 5, 2018. She was eventually diagnosed with a fractured patella. When asked why she did not seek treatment on the day of the accident, Claimant testified that because it was a Sunday it would have been too difficult to find a provider that was open.

The arbitrator found that the Claimant suffered a compensable accident arising out of and in the course of her employment. The Commission reversed this decision, and the Court of Appeals affirmed the Commission. Given the seriousness of a fractured patella and the fact that the Claimant alleges to have continued working for two days and then vacationed with family, the Commission and appellate court were similarly unpersuaded by the Claimant's delay in notice and seeking treatment. The Commission made significant determinations about Claimant's credibility, and the appellate court gave great deference to those findings.

Masters v. Illinois Workers' Compensation Commission

Q: Does an idiopathic injury necessitate the application of the risk analysis assessment from McAllister?

A: No. Claimant was a machine operator. Claimant experienced two injuries while working for Employer, the second of which was on December 2, 2011. On this date, Claimant slipped and fell off the platform, suffering injuries to her head and ribs, causing her to immediately lose consciousness. Of note, Claimant was diabetic, and testified to not having taken her medicine on the day of the accident and also consumed a sugary drink. However, she also testified that she was not feeling dizzy, weak, or tired, prior to the fall. When paramedics arrived, they determined that Claimant was exhibiting diabetic symptoms including lethargy, confusion, and being unable to answer their questions. Paramedics also did not observe any signs of physical trauma and were told by a witness that the Claimant had mentioned feeling thirsty and laid on the floor earlier. Claimant's doctor, Dr. Leong, opined that the Claimant's work accident was not caused by her diabetes.

Arbitrator found that although the incident occurred at her work location during work hours, she had failed to prove the existence of any work-related risk that contributed to an injury. The Commission found similarly, stating that no "accident" had occurred at all. The circuit court found that after analyzing the facts of the case under *McAllister*, the injury arose out of the Claimant's employment. With that said, the circuit court agreed with the

Commission's findings regarding Claimant's lack of credibility. Appellate court affirmed the circuit court's judgment.

The appellate court referred to *Stapleton v. Industrial Comm'n* and stated that if a claimant is injured as a result of an idiopathic fall, that is a fall due to the risk personal to the claimant, then such injuries are not compensable. "The appellate court explained that if the injuries are idiopathic in nature and employment conditions did not significantly contribute to the injury by increasing the risk of falling then the 'arise out of' prong is not satisfied." Ultimately, "If the injury sustained by the Claimant was idiopathic in nature, this would qualify as a personal risk, and the injury is not compensable under the Act. "Given that it is a personal risk, no employment related analysis is required under the Caterpillar test (*Caterpillar Tractor Co. v. Industrial Comm'n*. 129 Ill. 2d 52 (1989).

Juarez v. Illinois Workers' Compensation Commission, 2023 IL App (1st) 220684WC-U

Q: When should a wage-differential be used as opposed to PPD benefits?

A: In this case, Claimant was entitled to a wage-differential award as it was determined his earning capacity was reduced.

Claimant worked as a truck driver for Austin Tyler Construction Company loading and delivering materials such as asphalt, dirt, and stone. He was required to prepare and inspect his truck, which required him to climb in and out of the cab numerous times. On October 18, 2014, Claimant slipped and his foot landed in a pothole, causing injury in his foot. An MRI demonstrated torn tendons in his foot, and although surgery was recommended, Claimant opted for physical therapy in an effort to avoid surgery. Eventually, due to continuing and worsening pain and swelling, Claimant underwent surgery on May 19, 2016. Post-operatively, Claimant demonstrated very little improvement.

In June 2017, Claimant underwent a functional capacity evaluation which he was found to perform within the medium physical demand category. Austin Tyler provided him with accommodations such as a truck without a clutch (automatic transmission) and assigned him a "dry haul" that required less physical activity. Still, Claimant continued to be in severe pain, and in November of 2017 Claimant's doctor modified his work restrictions to light duty only with no climbing or heavy lifting.

The appellate court made a few findings crucial to its decision: (1) the fact that Claimant operated a clutch during the 2015 season post-accident without reporting the issue held little weight because his current condition post-surgery was what was at issue; (2) Claimant continued to have swelling multiple years after surgery which should have ceased by then; (3) the FCE simulated Claimant entering the cab only four times per day but realistically he was entering and exiting many more times per day; and (4) Claimant's doctor eventually gave him restrictions that prevented him from climbing onto a truck/trailer.

Therefore, “the court found the evidence demonstrated that Walsh is partially incapacitated from pursuing his usual and customary line of employment and there is a difference between the average amount which he would have been 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 able to earn in some suitable employment or business after the accident. Thus, the court found that the Commission’s award of permanent partial disability instead of a wage-differential was against the manifest weight of the evidence.”

The arbitrator awarded TTD benefits from October 19, 2014-May 19, 2016 and PPD to the extent of 30% loss of use of his left foot. The Commission adopted and affirmed the arbitrator’s decision, but extended TTD benefits to June 23, 2017. Circuit court reversed the Commission’s decision and remanded it on issues of TTD and PPD. The circuit court found TTD should have been paid through October 31, 2017, the date Employer accommodated Claimant’s work restrictions and further found that Employer’s accommodation of an automatic truck was insufficient. “Thus, the circuit court found that Claimant was entitled to a wage-differential award as the evidence demonstrated that Claimant lost access to his usual and customary line of occupation based on the physical requirements.” The appellate court ultimately affirmed the circuit court’s decision.

Walsh v. Illinois Workers’ Compensation Commission, 2023 IL App (3d) 230174WC-U

Q: If a Claimant has volunteered to work for no monetary compensation or expectation for future employment, has an employer/employee relationship been created?

A: No.

On June 29, 2014, while flying a plane for QCS to bring sky divers up to 10,000 feet, Claimant’s plane crashed during a landing attempt. Claimant sustained blunt force trauma to her face, causing lacerations and a broken nose. Claimant testified that she agreed to fly for QCS without payment or monetary compensation so that she could accumulate the necessary flight hours for her to become certified to fly jets as a commercial airline pilot. Claimant admitted to volunteering to do something which gave her the incidental benefit of not having to pay for accumulating flight hours.

The arbitrator found there was an oral implied contract between the parties and that Claimant was an employee of QCS at the time of the accident, and therefore gave her benefits. Commission reversed, holding that Claimant didn’t prove she was an employee at the time of the accident. The circuit court reversed the Commission’s decision finding that Claimant proved by a preponderance of the evidence that there was an implied contract for hire at the time of the accident. The appellate court found against the Claimant, stating that neither party had mutually agreed to the formation of an employer/employee relationship.

The appellate court agreed with the Commission’s finding that there was no mutual consideration that would have created a contract for hire because Claimant testified that she agreed to fly for QCS without payment or monetary compensation. Moreover, the

owner/operator of QCS testified to understanding Claimant to be an unpaid volunteer. The appellate court found the case analogous to *Board of Education of the City of Chicago v. Industrial Comm'n*, 53 Ill. 167 (1972) where the Claimant was studying at DePaul University when she applied to do volunteer work in the Chicago public schools within a program sponsored by the Board of Education of Chicago. The Claimant alleged that she was injured and claimed to be an employee of the Board of Education. The Illinois Supreme Court found the elements of consideration and mutual assent lacking because neither the claimant nor the Board of Education considered Claimant as an employee while she participated in the volunteer program. Similarly, the appellate court found that Claimant was working on an entirely voluntary basis with no expectation of payment or future employment, supporting the reasonable inference that neither party mutually agreed to the formation of an employment relationship.

Larson v. Illinois Workers' Compensation Commission, 2023 IL App (4th) 220522WC-U

Q: When an employee slips and falls on ice or snow in an employer-controlled/ provided parking area, does the accident arise out of and in the course of employment?

A: Most likely, because the "parking lot exception" is applicable in circumstances where there is some hazardous condition in a parking lot that the employer owned or asserted sufficient control over, regardless if the general public can park in that location.

In *W. Springs Police Dep't v. Illinois Workers' Comp. Comm'n*, petitioner appealed from the order of the circuit court reversing a decision to award her benefits under the Illinois Workers' Compensation Act. The appellate court reversed the decision and upheld the Commission's decision. Petitioner sustained injuries to her wrist and arm while employed as a crossing guard for the Village of Western Springs Police Department. The angled parking space in which she parked was not reserved for Village employees. The space was for commuter train parking, limited to 4 hours in duration, and available for use by the general public. But the Village granted her and several other Village employees the privilege of parking in the angled parking spaces in excess of the 4-hour parking limitation applicable to members of the general public. Petitioner was also required to give the Village her license plate number so that the police officers would know that it was her car and not issue a citation for parking in excess of the 4-hour parking limitation.

The Appellate Court found the Commission correctly determined that the preponderance of the evidence demonstrated that the Village owned the parking premises where the accident occurred, exercised control or dominion of the area, and although there is no evidence that the Village required the petitioner to park there, they did confer different parking rules so that Village employees could use that parking space. Based on the Village having granted the claimant and other Village employees the privilege of parking in the parking space where the claimant slipped and fell in excess of the 4-hour parking limitation applicable to members of the general public, the court concluded that the Commission's finding that the claimant fell in an employer provided parking space is not

against the manifest weight of the evidence. When, an employee slips and falls on ice or snow in an employer provided parking area, the resulting injury arises out of and in in the course of her employment.

W. Springs Police Dep't v. Illinois Workers' Comp. Comm'n, 2023 IL App (1st) 211574WC.

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