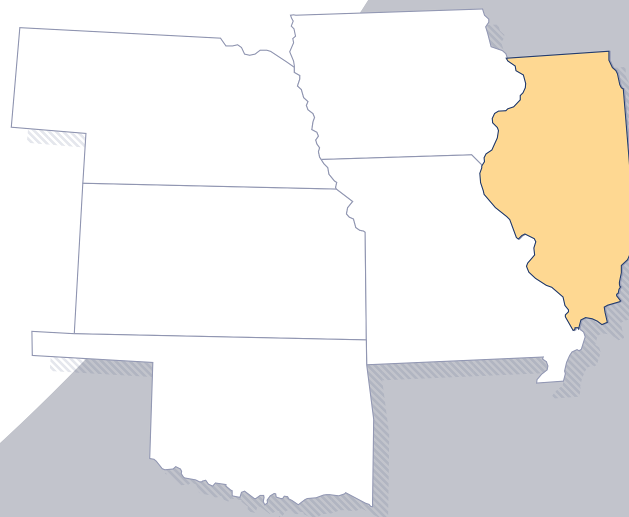
Workers' Compensation Reference Guide

Illinois



ILLINOIS WORKERS' COMPENSATION

I. Jurisdiction - Illinois jurisdiction is appropriate when:

A. The petitioner is injured in Illinois, even if the contract for hire is made outside ofIllinois;

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; or

C. 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 be 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. Three types of risks include: (1) an employment risk; (2) a personal risk; or a (3) neutral risk
    - *McAllister* Supreme Court decision impacts what is considered an "employment risk"
3. 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.

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V. Application Filing Periods - Statute of Limitations

A. Petitioner must file within three years after the date of accident, or two years afterthe 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.

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.

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F. When calculating a truck driver's AWW, the only funds to be considered arethose 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 thehealth 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 theprogram 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.

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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 subjectto 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 in the modified job.
2. Applicable when the employee is working light duty on a part or full-timebasis.

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—beginning 01/01/22, the Illinois minimum wage is higher ($12/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, and head 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

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maximum award for the loss of the use of a hand for repetitive trauma carpal tunnel cases tothe 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 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 abovethe 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 disabilityfor 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.
2. Burial costs up to $8,000.

L. **Permanent Total Disability**

1. Only arises when the petitioner is completely disabled which means thepetitioner 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 iscapped at the maximum rate.

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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 vocational rehabilitation and has been placed at MMI, maintenance picks up where TTD ceases (at the TTD rate) – similar to a continuation of TTD.

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   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 inwhich 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 orbusiness after the accident.
4. The 2011 Amendment to Section 8(d)(1) now provides that for accidents onor 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 ofimpairment 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.

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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 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

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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 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 pre-try case.
    - 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.
    - 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.
    - 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.

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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.
    - 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 underthe 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.

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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:
  1. The petitioner's intoxication is the proximate cause of the petitioner's accidental injury.
  2. 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 amountof 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.

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XII. Workers' Occupational Diseases Act - Covers slowly developing diseasesthat do not arise out of an identifiable accident or occurrence but notrepetitive 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 resultof 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—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 recovery around 70 to 75% of what was paid out in benefits.

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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 physicalwhen 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 subsequentlyloses 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.

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RECENTLY ASKED QUESTIONS IN ILLINOIS
FROM ISSUES ADDRESSED IN RECENT ILLINOIS CASES

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.

Q: Is an injured worker entitled to a wage-differential award under the Illinois Workers' Compensation Act if the injury does not reduce earning capacity?

A: No, the purpose of a wage-differential award is to compensate an injured claimant for his reduced earning capacity, and if the injury does not reduce his earning capacity, he is not entitled to such compensation.

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In *Haepp v. Illinois Workers' Compensation Commission*, claimant was awarded benefits for four separate injuries he sustained while working for respondent, the City of Chicago. Following the hearing, the arbitrator found that claimant sustained compensable injuries on each of the alleged dates and awarded him temporary total disability (TTD) benefits as well as reasonable and necessary medical expenses. On appeal the Commission declined to award wage-differential benefits and penalties and fees. To prove entitlement to a wage-differential award under the Illinois Workers' Compensation Act, a claimant must show that (1) he is partially incapacitated from pursuing his usual and customary line of employment and (2) there is a difference between the average amount which he would be able to earn in full performance of his duties in occupation in which he was engaged at time of accident and the average amount which he is earning or is able to earn in some suitable employment or business after accident. The purpose of a wage-differential award is 'to compensate an injured claimant for his reduced earning capacity, and if the injury does not reduce his earning capacity, he is not entitled to such compensation.

Claimant proved he was partially incapacitated from pursuing the duties of his usual and customary line of employment but failed to prove he suffered an impairment of earning capacity. The Commission did not preclude claimant from presenting evidence of his current earning capacity and did not focus exclusively on a comparison of claimant's pre- and post-injury income in finding that claimant failed to prove an impairment in earning capacity. The Commission's decision considered claimant's post-injury income, along with evidence pertaining to other factors, in reaching its decision. The Commission agreed with the arbitrator's determination that claimant failed to prove an impairment of earning capacity, finding the present case distinguishable from *Jackson Park Hospital*. In doing so, the Commission first considered the nature of claimant's post-injury employment. The Commission found that claimant had permanent work restrictions of no kneeling or squatting following his knee injury but continued working for respondent as a union carpenter earning the same wage as the other union carpenters.

Thus, respondent accommodated his restrictions by assigning him work that required no kneeling or squatting. Claimant competently performed such tasks on a consistent basis when he returned to work for respondent. Claimant testified that he worked for respondent on an accommodated basis at the time of the hearing and that he performed a wide range of assignments within his restrictions, including replacing doors, putting on door closers and hinges, working on locks and ceilings, patching holes in drywall, and constructing various structures. Therefore, the evidence showed that respondent was neither paying claimant to perform job duties he was unqualified to perform nor paying him a wage above what is normally paid for such services.

Haepp v. Illinois Workers' Comp. Comm'n, 2022 IL App (1st) 210634WC.

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Q: Is an employee's injury, sustained while walking across the floor at an employer's place of business, subject to the employment risk analysis?

A: No. By itself, the act of walking across a floor at the employer's place of business does not establish a risk greater than that faced by the general public and is therefore a neutral risk.

In *Buckley v. Illinois Workers' Comp. Comm'n*, the claimant arrived at the fire station and used the treadmill before his shift began; after using the treadmill, his knee felt stiff. When the claimant's shift began, he responded to a call involving a vehicle accident.

After he finished assisting medical personnel at the scene, the claimant guided the engine driver to back up the firetruck, so it no longer blocked traffic. He then ran around the front of the engine and jumped into the engine to hurry up and get out of the way of traffic. This required him to perform a right-hand pivot on the driver's side corner and then another right-hand pivot on officer side of the engine. He then grabbed the door latch and jumped up onto the step for the seat and got into the vehicle in a fluid motion. While sitting in that cramped space, the claimant's knees were bent at a 90-degree angle, and he was unable to extend his legs or move his legs and feet. He felt uncomfortable, but he testified that he did not initially feel any pain when he exited the engine at the scene of the vehicle accident or when he jumped into the engine as the firetruck left the scene.

He did not seek any treatment for any injury at the scene of the vehicle accident or immediately after leaving the scene. When he returned to the station, the claimant did not report that he had sustained an injury at the scene of the vehicle accident. After getting out of the engine and attending a meeting, his discomfort was getting worse at that time, and he was unable to straighten his leg. However, after leaving a training session, he tried to extend his knee. He then heard a popping sound, his knee gave way, and he fell to the ground.

The Deputy Chief testified that, while he was treating the claimant in his office, the claimant never indicated that he had had any type of incident at the fire run that morning, and he never reported a work injury after the fire run. Dr. Alpert subsequently opined that: (1) the claimant had preexisting right knee osteoarthritis and a degenerative medial meniscal tear; and (2) the claimant's condition was not causally related to a work-related accident. Dr. Alpert noted that the claimant had been complaining of pain and stiffness in the knee prior to the accident, and he did not have any kind of traumatic twisting injury to the knee. The claimant's running at work temporarily exacerbated the preexisting arthritic changes in his knee.

The Commission employed a neutral risk analysis after determining that the claimant's injury had no particular employment characteristics. Specifically, the Commission found that the evidence failed to show that the claimant sustained any kind of specific accident or injury while responding to the vehicle accident or while returning to the firehouse while seated in the cramped quarters of the fire engine.

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Based on its review of the medical records, including the statements the claimant had made to various treaters, therapists, and his employer, and upon its review of the claimant's testimony at arbitration, the Commission found that the claimant's statements regarding the circumstances and mechanics of his injury were inconsistent, and therefore not credible.

Buckley v. Illinois Workers' Comp. Comm'n, 2022 IL App (2d) 210055WC-U.

Q: Must there be a causal connection between employee's pre-existing spinal condition of radiculopathy and the work-related accident to receive payment of past and future medical expenses?

A: Yes, here the doctor's records stated that the petitioner's radiculopathy had nothing to do with his CRPS and the causation of the radiculopathy was difficult to assign.

In *Montgomery v. Illinois Workers' Compensation Commission*, petitioner sought payment from respondent, Caterpillar Logistics Services, Inc., for past and future medical expenses to treat a workplace injury he sustained while employed by respondent. Petitioner was driving a forklift for respondent when his forklift was bumped by another forklift. He had hold of the accelerator with his right hand and was thrown forward in the cab, resulting in a jarring or jamming of his right arm. The Appellate Court held that the Commission exceeded its statutory authority by commanding designation of central treating physician, but evidence was sufficient to support the conclusion that claimant failed to prove causal connection between his radiculopathy and his work-related accident.

The Workers' Compensation Commission exceeded its statutory authority under the Workers' Compensation Act, in proceedings on claimant's petition for payment of past and future medical expenses to treat a workplace injury, by commanding the designation of a central treating physician other than claimant's physician, and by requiring that such physician be either from particular clinic or with an accredited, university-based medical center in particular geographic areas. No provision of the Act empowered the Commission to attach conditions to its finding of whether future medical care was necessary and reasonable.

Furthermore, evidence was sufficient to support the conclusion that workers' compensation petitioner failed to prove causal connection between his radiculopathy and his work-related accident. In proceedings on claimant's petition for payment of past and future medical expenses, the physician who performed independent medical examination (IME) wrote in his report that claimant's radiculopathy had nothing to do with his chronic regional pain syndrome (CRPS), and that causation of his radiculopathy was difficult to assign.

Montgomery v. Illinois Workers' Comp. Comm'n, 2022 IL App (3d) 210604WC.

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Q: Are findings of a causal connection between the accident and claimant's current condition of ill-being credible because the finding is based on claimant's statements that she/he was injured?

A: Yes, there were several opinions of physicians that supported the causal connection. It is for the Commission to judge the credibility of the medical evidence, weigh that evidence, and draw inferences from the evidence.

In *McDonald's v. Illinois Workers' Compensation Commission*, claimant went to the refrigerator to obtain a box of meat. Claimant grabbed a box from the top shelf, which was above the height of claimant's eyes and forehead. As she retrieved the box, she placed it on her left shoulder and the box began to fall, twisting her lower back. As the box was falling, claimant tried to stop it with her right hand and felt pain in her right shoulder. She took the meat to the kitchen and told two supervisors what occurred.

McDonald's own medical expert, Dr. Phillips, opined claimant's shoulder and arm injuries were caused by her work accident. McDonald's attempted to discredit its own expert because his opinion was based on claimant's description of an accident. Claimant reported that she did not experience back or shoulder pain prior to the accident. Dr. Jain opined claimant's shoulder and back injuries were directly related to the accident based on examination and imaging. Dr. Vargas also thought the back and shoulder conditions were related to the work injury, based on his physical examination, the medical records, and imaging. Dr. Vargas recognized claimant had degenerative back conditions, but noted her back was asymptotic prior to the accident and symptomatic afterward. The Appellate Court held a rational trier of fact could agree with this conclusion. Therefore, the Commission's finding of a causal connection between the accident claimant suffered at work, and the current condition of claimant's shoulder and back ill-being is not against the manifest weight of the evidence.

McDonald's v. Illinois Workers' Comp. Comm'n, 2022 IL App (1st) 210928WC.

Q: Does an employer/employee relationship exist if the employer has control over where and when the employer does his/her work?

A: Yes, if the employer exercises significant control over where and when the employee works and the employee is required to seek approval.

Claimant, Kenneth Wright, was a staff photographer for the Final Call newspaper ("FCN"), where he arrived at FCN's newspaper office, signed in, and began searching for news events to cover. He found a story about the fire deaths of three infants and because he did not own a vehicle, he took public transportation to the scene. After boarding the southbound bus, he took three or four steps when the force of the bus moving caused him to fall. His left leg bent at the knee, and he hit his back and left arm on the floor of the bus. Claimant notified FCN's editor because he was unable to walk. Dr. Robert Muhammad referred him to Dr. Kermit Muhammad at Oak Orthopedics.

On an intake form at Oak Orthopedics, a member of the registration staff recorded that the claimant was to be seen for left knee complaint sustained when he slipped going to

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his seat on a bus on January 7, 2009. The form contains a question: “Is this a work-related injury?”; followed by the word “No.” The claimant was seen that day by Dr. Kermit Muhammad who noted a history of the claimant having “sustained an injury during the course of his work duties when he slipped on a CTA bus in Chicago during January of this year.”

Dr. Kermit Muhammad estimated both that the claimant might be able to return to work in 6 to 9 months, depending upon his progress and that the claimant's entire recovery period was expected to be at least 12 to 18 months if there were no complications. On March 23, 2009, Dr. Kermit Muhammad executed a work status report relating to the claimant which stated: “No work until further notice.” On April 7, 2009, Dr. Kermit Muhammad issued a work status report, stating that the claimant could begin working from home on the internet from 11:00 a.m. until 5:00 p.m. with his leg elevated.

FCN continued to pay the claimant through September 2, 2009, but made no further payments thereafter. In a letter dated September 3, 2009, the law firm representing FCN sent a letter to the claimant via his attorney, stating that FCN was terminating all payments to him because, although he was “once employed” by FCN as a photographer, he had not been “actively working” for several months. However, the claimant testified that FCN never offered him light duty work.

FCN argued the claimant shared an employer/independent contractor relationship, noting the claimant was free to take pictures for other newspapers, it never attempted to stop the claimant from doing so, and it allowed the claimant to use its cameras when freelancing for other newspapers. FCN contended that the claimant controlled his own actions as evidenced by his ability to select news events to cover, his freelance photography for other papers, and the fact that the claimant was not reimbursed for travel when he was taking photographs for FCN.

However, the Appellate Court upheld the Commission’s decision that the claimant sustained injuries on January 7, 2009, that arose out of and in the course of his employment with FCN and a causal connection exists between the claimant's current condition of ill-being and his January 7, 2009, accident. FCN was subject to the provisions of the Act, an employer/employee relationship existed between FCN and the claimant, and the claimant gave FCN timely notice of his accident.

The evidence established that FCN exercised control over the claimant's work. It controlled his choice of subjects to photograph for it, and he was required to seek approval from the editor or his supervisor before pursuing his own selection of stories to pursue. FCN controlled where the claimant did his work and when, noting that the claimant testified that he was required to be in FCN's office when he was not out on assignment, and when he was out on an assignment, he was required check in by phone.

Final Call, Inc. v. Illinois Workers' Comp. Comm'n, 2022 IL App (1st) 211137WC-U.

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Q: Does the exception of the traveling employee apply if the travel is not an essential element of employment?

A: No. If there is no evidence such that employer reimbursed employee for travel expenses, nor did it assist in making travel arrangements, then the travel is not an essential element of employment.

Claimant, Brooke Hoots, filed a claim for benefits under the Illinois Workers' Compensation against her employer, Dollar General, seeking benefits for an injury to her left foot and ankle that arose out of and in the course of her employment. Claimant parked her vehicle in a parking lot near employer's store in South Jacksonville, Illinois. As she was walking into the store to attend a mandatory employee training, she slipped on black ice, fell, and injured herself in the parking lot.

The Commission and Appellate Court concluded that the parking lot where claimant fell was open equally to both the general public and employer's employees, thus she was not at a greater risk than the general public when she fell. The arbitrator noted that claimant failed to offer credible evidence to support a finding that employer either owned or maintained the parking lot; she did not present evidence that she entered or exited the store any more frequently each day of training than any customer who came into the store; and claimant admitted that employer did not direct its employees where to park.

Furthermore, there was no damage or defect noted in the parking lot, given claimant fell on black ice. The arbitrator also determined that there was no evidence that claimant's folder containing training information that she carried impacted her fall.

Claimant also failed to provide evidence that she was a traveling employee. Claimant did not provide evidence that she was paid for her travel time and expenses. The parking lot was neither owned nor maintained by employer, claimant was not directed where to park when she attended training, there was no evidence that the parking lot was a route required by employer, and the parking lot was open to the general public, including customers of nearby businesses and thus not compensable under the Workers' Compensation Act.

Hoots v. Illinois Workers' Comp. Comm'n, 2022 IL App (4th) 220041WC-U.

Q: Is the determination of the existence of an employer-employee relationship based on a strict application of specified factors?

A: No, the determination of the existence of the employee-employer relationship is based on the totality of the circumstances, and not a strict application of any specified factors.

Factors that have been held to determine the existence of an employment relationship include whether the employer may control the manner in which the person performs the work, whether the employer dictates the person's schedule, whether the employer pays the person hourly, whether the employer withholds income and social security taxes from

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the person's compensation, whether the employer may discharge the person at will, and whether the employer supplies the person with materials and equipment.

In *Tile Roofs, Inc. v. Illinois Workers' Comp. Comm'n*, the Commission found the substance of claimant's relationship to respondent never changed after claimant retired from the union or after claimant formed an LLC. In this case, the Commission considered that (1) claimant continued to supervise crews comprised of Mortenson employees, (2) claimant still ordered equipment and materials for the roofing projects either for respondent or Mortenson, (3) Mortenson continued to furnish most of claimant's tools, (4) respondent or Mortenson still provided a company vehicle to claimant and paid for its fuel, (5) Mortenson still paid for claimant's hotels when he stayed out of town for projects, and (6) Mortenson provided the training claimant needed for the zinc roofing project at issue. Each of these, and the totality of them, supported the Commission's determination claimant was respondent's employee.

Tile Roofs, Inc. v. Illinois Workers' Comp. Comm'n, 2022 IL App (1st) 210819WC-U.

Q: *Do the exclusive remedy provisions of the Illinois Workers' Compensation Act ("the Act") bar a worker from bringing an asbestos injury lawsuit against their employer?*

A: No, because a valid contract of service between the employer and employee must exist, and the agreement at issue was illegal, so no valid contract was formed.

In *Daniels*, the plaintiff was a temporary worker hired by ABC. ABC was hired by SIPA as an independent contractor to remove asbestos scraps from its facility. ABC was not licensed to remove asbestos. Daniels was directed by ABC to remove the debris. He was not given any protective equipment to wear while removing the scraps until two weeks after he began his work.

In 2017, Daniels was diagnosed with terminal mesothelioma. Daniels filed a seven-count complaint against ABC and SIPA alleging that they exposed him to asbestos and caused him to develop mesothelioma. The Circuit Court of Dekalb dismissed Plaintiff's complaint, stating among other reasons, that his claims were barred by the exclusive remedy provisions of the Workers' Compensation Act.

On appeal, Daniels' widow argued that the court erred in dismissing his complaint pursuant to the Act and the Workers' Occupational Diseases Act. Both acts have provisions providing an exclusive remedy by which an employee can recover against an employer for work related disease or injury. However, in *Daniels* the court highlighted that an employee could escape the exclusive remedy provision of the Act, if they show their injury was not accidental, did not arise from their employment, was not received during employment, nor compensable under the Act. In considering whether the employee met the aforementioned elements, to escape the exclusive remedy provisions, it is important that a valid contract exist between the employer and employee exist.

The court determined that there was no valid contract between Daniels and ABC. When ABC directed Daniels to clear the debris containing asbestos, it violated the Commercial and Public Building Asbestos Abatement Act because ABC was not licensed to remove

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asbestos material. As for the alleged employment contract between ABC and Daniels, the contract was unenforceable, a contract requiring someone to do something that is illegal is the equivalent to there being no contract at all. Since there was no valid contract between Daniels and ABC, the exclusive remedy provisions of the Act did not prevent Daniels from bringing a suit against ABC.

Daniels v. Venta Corp., 2022 IL App (2d) 210244

Q: ***Does a medical treatment provider have a private right of action against an employer and insurer for unpaid medical bills?***

A: No.

OSF Healthcare ("OSF") provided treatment for an employee of Gallagher Bassett Services, Inc. ("Gallagher"). Great Dane, the employer's insurance provider, paid $43,486.99 in medical bills. However, $96,631.31 remained unpaid as the expenses were in dispute. OSF filed a complaint against Gallagher and Great Dane for the unpaid balance. Gallagher and Great Dane filed a Motion to Dismiss, arguing that OSF lacked standing to sue, and the Act did not provide a private right of action to medical service providers.

The motion was granted and on appeal, OSF argued that Section 8.2 of the Act, which states when medical treatment providers are to be paid, allowed it to recover the unpaid medical bills. The court, however, stated that this section, nor any other sections of the Act, expressly grant the provider the right to sue for unpaid medical bills.

The court did state that a private right of action exists if: the plaintiff is a member of the class to be benefitted by the statute, their injury is one the statute was designed to protect, the private right of action is consistent with the purpose of the statute, and the private right of action is necessary to provide the plaintiff with an adequate remedy. OSF could not meet any of these elements.

The purpose of the Act is to provide compensation to employees for injuries they sustained while working. Medical providers may receive some benefit from the Act, the court stated, but the benefit is incidental, and they were not a member of the class in mind. The court also noted that OSF could not show that the private right of action was necessary to provide it an adequate remedy. OSF conceded that filing an action against the employer and insurance company was not its only remedy; it could have sued the employee for payment of the remaining balance. For these reasons, OSF lacked standing to sue the employer and insured for the unpaid bills.

OSF Healthcare System v. Great Dane, 2022 IL App (3d) 210227-U

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Q: *Do the exclusive remedy provisions of the Act extend to a general contractor who paid workers' compensation insurance premiums and benefits for a subcontractor and its employees?*

A: No.

In *Munoz*, the plaintiff filed a suit against general contractor, Bulley & Andrews, LLC. (Bulley & Andrews), for injuries he sustained while working as an employee of its subcontractor Bulley & Andrews Concrete Restoration, LLC. (Bulley Concrete). The circuit court of Cook County dismissed Munoz's suit, stating that Bulley & Andrews was immune from suit due to the exclusive remedy provisions of the Act. On appeal, the court affirmed the circuit court's judgment. Munoz then appealed to the Illinois Supreme Court.

At the Supreme Court, at issue was whether Bulley & Andrews, as the parent company and general contractor of Bulley Concrete, was also afforded the protections of the exclusive remedy provisions of the Act. The Court ruled that the exclusive remedy provisions only applied to the immediate employer of the employee. Here, Bulley & Andrews was not Munoz's immediate employer. The Court further added that the Act does not grant nonemployers the ability to acquire immunity by paying workers' compensation insurance premiums on behalf of the direct employer, as Bulley & Andrews did.

Because the exclusive remedy provisions did not apply to Bulley & Andrews, Munoz was not barred from bringing a suit against the company.

Munoz v. Bulley & Andrews, LLC, 2022 IL 127067

Q: *Is an employee's loss of the ability to maintain their privacy rights compensable under the Act?*

A: No.

In *McDonald*, Plaintiff filed a putative class action suit against defendant employer Symphony Bronzeville Park, LLC. (Symphony). McDonald alleged that Symphony violated the Biometric Information Privacy Act (BIPA) and her privacy rights by collecting, using, and storing her biometric information, fingerprints, without providing written notice. Under BIPA, a private entity cannot collect, capture, or otherwise obtain a person's biometric information unless it first informs the individual, in writing, that their biometric information is being collected or stored, informs the individual, in writing, of the specific purpose and length of time for which the information is being collected, stored, and used, and lastly the entity must receive a written release from the induvial, whose biometric information is to be collected, stored, and used.

McDonald alleged in her complaint that when she was an employee of Symphony, the company used a fingerprint time keeping system, but she was never given the written notices required under BIPA. She alleged that the employer's failure to comply with BIPA, resulted in her privacy rights being violated. Symphony filed a motion to dismiss, arguing that the Act preempted claims by the employee against the employer under the privacy

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act. The circuit court denied the motion, stating that the injury McDonald suffered involved loss of the ability to maintain her privacy, which was not an injury compensable under the Act. Symphony filed a motion to reconsider, and certified a question to the Illinois Supreme Court which was "Do the exclusivity provisions of the Act bar a claim for statutory damages under BIPA?"

The Supreme Court stated that the exclusivity provisions of the Act do not bar claims for statutory damages under the Act. The Court noted that the Act is remedial in nature, its purpose is to provide financial protection for injured workers until they can return to the workforce. The exclusivity provisions in Sections 5(a) and 11 of the Act preclude an employee from suing their employer, however; the Court noted, an employee can circumvent the provisions if the remedy is not compensable under the Act. The Court stated that the circuit court was correct in its reasoning that the loss that McDonald suffered was the loss of the ability to maintain her privacy, not a psychological or physical injury compensable under the Act. The Court finally added that the Act was not designed to regulate or deter employer conduct, but to compensate injured employees; thus, McDonald's Privacy Act claim was not within the scope of the Act.

McDonald v. Symphony Bronzeville Park, LLC, 2022 IL 126511

Q: ***Are penalties and attorney's fees under Sections 19(K), (l) and 16, appropriate when the employer has made TTD payments and paid all medical bills presented?***

A: No, not when the employer has not acted in bad faith.

In this case, the claimant was injured during a trip and fall at work. In August of 2019, the claimant's physician placed her on "no work" status and in September of 2020 her physician recommended surgery, but the insurance provider would not authorize the procedure. For over one year surgery was not authorized, and TTD benefits were not paid from August 2019 to September 2020.

The claimant filed a petition for a 19(b) immediate hearing, and sought penalties and attorneys' fees under sections 19(k), 19(l), and 16. The arbitrator awarded TTD benefits from August 2019 to September 2020; however, they declined to impose penalties and fees stating that it was not enough for the claimant to show that the employer failed, neglected, or refused to make payments or unreasonably delayed payment without good and just cause. Instead, the claimant would need to show that the employer had a vexatious delay in payment.

The arbitrator stated that the employer did not act in bad faith by disputing the claim based on causal connection between injury and current condition. Further, they noted that the employer made payments of TTD benefits, and medical treatment, so the employer's delaying payment while it sought to clarify claimant physician's opinion was not unreasonable. Lastly, the arbitrator noted that while the employer did fail to pay some medical bills, their failure to pay was not in bad faith because the employer was not told about the existence of the bills.

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The cumulative actions of the employer were not found to be unreasonable and did not prove a “callousness” required for imposing penalties and fees under sections 19(k), 19(l), and 16. The Commission adopted the decision of the arbitrator.

Lopez v. People 4U, Inc., No. 19WC24975, 2022 Ill. Wrk. Comp. LEXIS 1

Q: *Is an employee’s sexual assault by their supervisor compensable under the Act?*

A: Yes

In October 2017, the claimant reported a sexual assault by her supervisor. When she went to the hospital for a sexual assault exam, she then revealed that her supervisor had consistently been sexually assaulting her throughout her employment. At arbitration, one of the many disputed issues was whether the claimant’s sexual assault was an accident that arose out of the course of her employment.

The employer argued that claimant did not sustain a work-related accident because the assault by her supervisor was personal to her, however; the arbitrator disagreed. The Commission agreed with the arbitrator’s conclusion and further added that sexual assault is a physical bodily injury crime in the state of Illinois, and for the purpose of these crimes bodily harm may be shown by either actual injury such as bruises or may be inferred based on common knowledge. The Commission reasoned that it was proper to infer that sexual assault was likely to involve physical trauma, and it was appropriate that the claimant’s injury be characterized as physical trauma, which is compensable under the Act.

Finally, the arbitrator noted that it is settled that physical assault by a coworker can constitute an accidental injury under the Act. The claimant’s sexual assaults by her supervisor were found to be work-related accidents that arose in and out of the course of her employment, and her injury was compensable under the Act.

Kinsey v. State of Illinois – IL Youth Center St. Charles, NO. 17WC 34354, 2022 Ill. Wrk. Comp. LEXIS 90

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