



BRYCE DOWNEY & LENKOV
LLC

Workers' Compensation Newsletter August 2015

Upcoming Webinar!
8/20/15

You Asked For It, You Got It:
Your Most Requested WC
Questions Answered
[Click Here to Register](#)



THE TOP 5 LIST

Top 5 Signs A Claimant Is Not Complying With Job Placement Efforts

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov
Workers' Compensation Department

Illinois recognizes wage differential and permanent total awards. What this means is that if you are unable to return the claimant to his/her pre-injury wages, you are responsible for the difference between what the claimant was earning and what they can now earn. To mitigate this, we often employ vocational rehabilitation experts to get a claimant back to work. However, claimants often put up obstacles to our job placement efforts. When this occurs, there may be a basis for terminating benefits. Here are the top 5 signs that a claimant is failing to comply with job placement efforts:

1/Poor

Communication

A sure sign that a claimant will be a poor candidate for job placement is lack of communication, with either you or your job placement expert. The claimant has a duty to comply with your efforts, and regular and timely communication is central to that.

2/Failure To Keep Job Logs

To sustain his/her burden of proof, a claimant must provide written evidence that he/she is actively and regularly looking for a job. That doesn't mean just writing down names of random employers. The claimant has to actually provide detailed information about real jobs.

3/Sabotaging Interviews

The claimant has a responsibility to show up for a job interview in a manner that will generate a job offer.

Showing up late, disheveled and acting unprofessionally are all examples of an unengaged claimant.

4/Failure To Fully Take Part In Retraining Efforts

If your expert is trying to train a claimant on proper interview skills, or you enroll the claimant in a class, make sure he/she is tuned in and is cooperating.

5/Positive Surveillance

Vocational rehabilitation is a good time to survey your claimant. If you catch them doing something inconsistent with his/her alleged disability, you may have a strong defense to further exposure.

[Page 2](#)

Legal Face-Off – Sound Bite

[Page 3](#)

Upcoming Seminars

Legislative Update

Which Date Determines Benefit Rate:
Trial Or Accident Date?

[Page 4](#)

Inconsistent Testimony Prompts
Reversal

TRENDING: Sharing Economy's
Impact On WC

[Page 5-7](#)

BDL Is Growing

Who We Are

Free Webinars

Cutting Edge Legal Education

Giving Back



SOUND BITE: LEN GOODMAN

On Legal Face-Off's recent episode, hosts Rich Lenkov and Jason Whiteside interviewed Rod Blagojevich's appellate attorney Len Goodman, who provided an in-depth look into the news surrounding the infamous Illinois politician. Former Assistant U.S. Attorney Jeffrey Cramer also added his thoughts on the future of the imprisoned ex-governor. Attorney Stephen Joseph discussed his lawsuits involving distracted driving, trans fat and plastic bags. Rich and Jason closed out the show discussing the hottest legal issues in the Legal Grab Bag!

Rich: "...Obviously a busy week, with the news that came down a couple days ago that the Court of Appeals in Chicago vacated 5 out of the 18 accounts that ex-governor Blagojevich is serving prison time for in Colorado. Tell us where you were when you heard the news, did you hear it coming and how did that all go down?"

Len: "...we've been waiting a long time for it and I have to say, it was quite a disappointment when I finally read the opinion."

Rich: "So let's go through that... why do you think that the court got it wrong?"

Len: "Well I can't answer why they got it wrong; I just know that they did... [the appeal] catalogs a litany of errors at that trial and anyone that I know, including reporters that are no friend of Blagojevich, that sat through that second trial, have told me 'that was not a fair trial by any stretch.'... The appeal is about 90 pages long... the decision was I think 23 pages. Of the significant issues in the appeal, they addressed one of them seriously. That's why it's disappointing. Most of the serious claims on appeal were just ignored completely."

[Click Here To Listen To The Full Episode:
http://wgnplus.com/category/legal-face-off/](http://wgnplus.com/category/legal-face-off/)

Recent Topics:

- Rod Blagojevich's appeal
- Bill Cosby
- Distracted Driving Lawsuits
- Sandra Bland
- Demi Moore Pool Death
- Go Set A Watchman

Recent Guests

- Alan Dershowitz, Professor of Law, Emeritus, Harvard Law School
- Tom Fitton, President Of Judicial Watch
- William Blumenthal, former Federal Trade Commission General Counsel

[Legal Face-Off: Judicial Watch President: "The State Department Has Been Playing Defense For Hillary Clinton So Much"](#)

[Legal Face-Off: Lawsuit Regarding Clinton's Emails, Harper Lee Prize Winner, Mergers And Acquisitions On Upswing](#)

[Legal Face-Off: Landmark Supreme Court Decisions, Marijuana Legalization And The Legal Grab Bag](#)

Please like us on [Facebook](#) and [subscribe in iTunes](#). Email legalfaceoff@gmail.com to interact with the show. Send us your questions and we will answer them on air—nothing is off limits.

Upcoming Seminars

- On **9/17/15**, **Jeanmarie Calcagno** will present to the Illinois Manufacturers' Association. She will discuss negotiation strategies and causation in Illinois workers' compensation claims. [Click Here](#) for more info and to register
- On **10/29/15**, **Tim Alberts** will present "Effective Statements" in Des Moines, IA for [CEU Institute](#)



By: [Michael Milstein](#)



We are excited to announce a new monthly column keeping you up to speed with Illinois workers' compensation legislation and how it may affect your claims or workplace.

Over the last several months, numerous bills and amendments were presented to the Illinois House and Senate. On 8/4/15, Senate Amendment 1 to SB0162, sponsored by State Senator Kwame Raoul, passed out of the Senate Judiciary Committee by a 7-2 vote. It provides for several reforms, including:

- More clearly defining traveling employees and reaffirming the reasonable and foreseeable standard
- Clarifying that an AMA impairment rating is not required for a PPD award
- Creating the WEAR (Workers' Compensation Edit, Alignment and Reform) Commission to recodify the Act

These reforms do less to change workers' compensation laws than those proposed by House republican leader Jim Durkin, in HB4223, which is currently in the Rules Committee. That bill provides for numerous reforms, including:

- Changing the causation standard to require an accident to be a major contributing cause

- Providing for credit for "person as a whole" injuries against subsequent injuries
- More strictly defining employees
- Creating a workers' compensation ombudsman to "assist injured workers" in understanding the IWCC

Which Date Determines Benefit Rate: Trial Or Accident Date?

By: [Tim Alberts](#)



In *Dibenedetto v. The Illinois Workers' Comp. Comm'n*, 2015 IL App (1st) 133233WC, the Illinois Appellate Court addressed what date should be used to determine the benefit rate.

Petitioner could not return to his pre-injury job due to his work-related injuries. The arbitrator awarded a wage differential award, applying the maximum weekly benefit allowable under Section 8(b)(4) applicable to the trial date.

The Commission modified the arbitrator's award, reducing the weekly wage differential award by applying the maximum weekly benefit allowed pursuant to Section 8(b)(4) relative to the accident date. The Commission held that the accident date (rather than the trial date) determines the benefit rates. The Circuit Court and Appellate Court affirmed.

Practice Tip:

Be sure to calculate the value of every case based on the accident date – not the trial date. Not only is this the correct way to calculate the value of the case, but it will result in a lower value because benefit rates go up over time.

Inconsistent Testimony Prompts Reversal

By: [Matt Alva](#)



In *Anderson v. Heartland Automotive Services*, 12 IL. W.C. 24825 (Ill. Indus. Comm'n 2015), the Commission addressed the importance of a petitioner's testimony being consistent with the medical records.

At trial, Petitioner, a mechanic, testified that on the alleged accident date, he was working underneath a car when he felt discomfort in his neck. He admitted that he originally felt the discomfort a day or two prior. Petitioner also testified to complaining to his assistant manager that he felt like he was having a heart attack. Petitioner testified that after work, he sought treatment on his own, reporting to his doctors that he injured himself at work and heard a pop in his neck. However, medical records from the visit make no mention of a work accident or Petitioner hearing a pop in his neck. Additionally, Petitioner testified that he completed an accident report on the accident date, but Petitioner's manager testified that Petitioner did not do so.

The arbitrator awarded benefits. However, the Commission reversed, denying benefits based on the discrepancy between Petitioner's testimony and the medical records. The Commission also noted the lack of an accident report from the day in question, despite Petitioner's testimony that he had completed one.

Practice Tip:

Pay close attention to any initial statements Petitioner makes to his treating providers. Highlighting inconsistencies between Petitioner's statements or testimony and medical records can be an effective way to discredit a witness to help defend against causation.



THE SHARING ECONOMY'S IMPACT ON WC

By: [Maital Savin](#)

Associate, Workers' Compensation and Labor & Employment Department



We are excited to announce a new column "Trending," which considers the impact of current events on workers' compensation law.

Independent Contract Or Employee?

Many of us have come to love services such as Uber, Instacart and TaskRabbit. But what impact does this new "sharing economy" have on workers' compensation? We may think that these services involve independent contractors, who can set their schedules and do not have supervisors. However, a number of recent lawsuits argue that these workers are employees. While litigation regarding whether a worker is an employee or an independent contract is not new, the growing sharing economy makes this issue more relevant.

Speculation

Some experts suggest that if all such workers are deemed to be employees, these types of companies will likely need to scale back to stay afloat, which will cause these workers to lose much of the flexibility that initially attracted them to these types of jobs. Others suggest that we should create a third type of category where employers maintain some control in exchange for paying certain expenses and workers' compensation, as other countries have done.

Impact

Earlier this summer, a California labor commissioner ruled that an Uber driver was an employee. Although the commissioner's ruling only applies to the particular individual involved in that case, we must consider the impact of the ruling on workers' compensation. Independent contractors are not entitled to workers' compensation benefits. However, employees and potentially those that fit in some new third category of worker, are entitled to workers' compensation benefits. Until Illinois courts fully address this question, Illinois companies and carriers should keep a close eye on this issue to ensure proper employee classification and coverage.

BDL Is Growing

James W. McConkey



Jim is a commercial litigator who served as lead counsel in state and federal courts in a wide range of business disputes, including breach of contract, specific performance, unfair competition, non-competition and non-solicitation, tortious interference, breach of fiduciary duty and common law and statutory consumer fraud claims. Jim has also litigated business divorces and has advised his clients on ways in which to structure their businesses so as to avoid and manage disputes that often arise in privately held companies.

Jim also served as lead counsel in individual and putative class action lawsuits involving claimed violations of state and federal laws affecting consumer lending, including the Fair Debt Collection Practices Act, Gramm Leach Bliley Act, Fair Credit Reporting Act, Truth in Lending Act, the Telephone Consumer Protection Act and state debt collection statutes. Jim also counseled debt acquisition companies on the interpretation of and compliance with state and federal statutes affecting their collection activities.

He has many years of experience defending traditional tort claims, including wrongful death, negligence, and product liability claims, as well as construction and mechanic's lien claims.

In a prior life, Jim was a Division I basketball player. Jim was a three year starter at Davidson College and served as team captain his senior year. He was also named to the all-conference freshman team and played in the NCAA tournament his senior year.

Timothy J. Brown



Tim has significant jury trial and subrogation experience arguing and defending individuals, businesses and schools. He has also successfully defended numerous bench trials. Prior to joining BDL, Tim defended realtors in real estate cases. He also defended businesses in personal injury cases, ranging from automobile accidents to premises liability cases. Tim defended schools in a variety of cases, ranging from bus accidents, to bullying and fighting cases, and allegations of negligence regarding their premises. He has also defended companies in products liability cases.

Tim enjoys spending his free time with his family and is an avid runner. As of this summer, he completed 14 marathons, including an ultra-marathon, and 15 half marathons, finishing around 200 races in the last 6 years.

Who We Are

Bryce Downey & Lenkov is a firm of experienced business counselors and accomplished trial lawyers committed to delivering services, success and satisfaction. We exceed clients' expectations everyday while providing the highest caliber of service in a wide range of practice areas. With offices in Chicago, Crown Point, IN, Memphis and Atlanta, and attorneys licensed in multiple states, we are able to serve our clients' needs with a regional concentration while maintaining a national practice.

Our attorneys represent small, mid-sized and Fortune 500 companies in all types of disputes. Many of our attorneys are trial bar certified by the federal court and have been named Leading Lawyers, AV Preeminent and were selected to Super Lawyers and Rising Stars lists. Our clients enjoy a handpicked team of attorneys supported by a world-class staff.

Our Practice Areas Include:

- Business Litigation
- Business Transactions & Counseling
- Corporate/LLC/Partnership Organization and Governance
- Construction
- Employment and Labor
- Counseling & Litigation
- Entertainment Law
- Insurance Coverage
- Insurance Litigation
- Intellectual Property
- Medical Malpractice
- Professional Liability
- Real Estate
- Transportation
- Workers' Compensation

Giving Back

Race Judicata 2015



BDL is proud to sponsor Race Judicata's wine tent again this year! Each year, Bryce Downey & Lenkov sponsors Chicago Volunteer Legal Services' Race Judicata 5K Race. CVLS is the first and pre-eminent pro bono civil legal aid provider in Chicago. We are currently working on designing this year's t-shirts. Your suggestions are welcome!

CowaLUNGa

On 8/1, Jeff Kehl and Jason Klika participated in the Respiratory Health Association's "CowaLUNGa" to help promote healthy lungs and fight lung disease through research, advocacy and education. Jeff and Jason cycled 65 miles from Gurnee Mills Shopping Mall to Lake Geneva, Wisconsin. For more info on CowaLUNGa and the RHA, [Click Here](#).



BRYCE DOWNEY & LENKOV
LLC

Other Newsletters

Bryce Downey & Lenkov regularly issues several practice area newsletters. If you would like a copy of any of the below articles from other BDL newsletters, please email our Marketing Coordinator Jason Klika at jklika@bdlfirm.com.

Labor & Employment Law

- Transgender Employees: News And Tips For Employers
- Supreme Court Weighs in on Pregnancy Discrimination
- Think you Should Terminate an Employee That Calls you a "Nasty MF"? Think Again

General Liability

- The "Open and Obvious" Defense Restored By the Illinois Supreme Court
- Indiana Court of Appeals Affirms Admission of Testimony of Naprapath

Corporate & Construction

- Mechanics Lien Refresher: Are You a Contractor or a Subcontractor?
- Seventh Circuit Confirms Insurer Has No Obligation to Defend Construction Defect Claim

Free Monthly Webinars

Here Is What Attendees Had To Say About Our July Webinar: More Top 5 Lists

"Good basics covered that occur in many claims."

"Gave important tips on when & how to challenge certain issues within WC program."

"Informative, also in a format that keeps the viewers/listeners active."

"I enjoy the Top 5 theme, keeps it moving."



Upcoming

8/20/15

You Asked For It, You Got It: Your Most Requested WC Questions Answered

Rich Lenkov & Jessica Rimkus

[Click Here to Register](#)

Recent

- [Our Hottest Illinois Workers' Compensation Top 5 Lists](#)
- [Fighting Fraud Claims](#)
- [Accident Denials](#)
- [Causation in Illinois Workers' Compensation](#)
- [Strategies And Tactics for Defending Indiana WC Claims](#)



If you would like a copy of any of our other prior webinars, please email Marketing Coordinator Jason Klika at jklika@bdlfirm.com.

Cutting Edge Legal Education

If You Would Like Us To Come In For A Free Seminar,

[Click Here Now](#) Or Email Rich Lenkov At

rlenkov@bdlfirm.com

Our attorneys regularly provide free seminars on a wide range of workers' compensation topics. We speak to a few people or dozens, to companies of all sizes and large national organizations. Among the national conferences at which we've presented:

- Claims and Litigation Management Alliance Annual Conference
- CLM 2015 Retail, Restaurant & Hospitality Committee Mini-conference
- National Workers' Compensation and Disability Conference® & Expo
- SEAK Annual National Workers' Compensation and Occupational Medicine Conference
- 2015 National Workers' Compensation & Disability Conference
- RIMS Annual Conference

Some of our previous seminars include:

- Turning The Tables: Using An Employee's Own Actions As A Defense To Their Workers' Compensation Claim
- Closing The Nightmare Case
- Workers' Compensation 101
- Mandatory CMS Reporting Requirements: What You Need To Know
- Managing & Closing WC Claims In A Cost-Effective Manner
- Top 10 Ways To Reduce Legal Expenses NOW
- The Mediation Process
- Balancing Aggressive Pursuit Of Lien Recovery With Associated Litigation Expenses
- Dealing With Difficult Claimants
- Health-Related Leave: Workers' Compensation, ADA and FMLA

Illinois Rates At A Glance



BRYCE DOWNEY & LENKOV
LLC
www.BDLFIRM.COM

PPD Benefits Schedule Of Body Parts

Effective Dates	Maximum TTD	Minimum PTD & Death	State Average Weekly Wage
1/15/10 - 7/14/10	\$1,243.00	\$466.13	\$922.45
7/15/10 - 1/14/11	1,243.00	466.13	925.08
1/15/11 - 7/14/11	1,243.00	466.13	930.39
7/15/11 - 1/14/12	1,261.41	473.03	946.06
1/15/12 - 7/14/12	1,288.96	483.36	966.72
7/15/12 - 1/14/13	1,295.47	485.80	971.60
1/15/13 - 7/14/13	1,320.03	495.01	990.02
7/15/13 - 1/14/14	1,331.20	499.20	998.40
1/15/14 - 7/14/14	1,336.91	501.34	1,002.68
7/15/14 - 1/14/15	1,341.07	502.90	1,005.80
1/15/15 - 7/14/15	1,361.79	510.67	1,021.34
7/15/15 - 1/14/16	1,379.73	517.40	1,034.80

Effective Dates	Maximum PPD	Minimum Rate Death & Total Permanent Disability: 50% of the Statewide Average Weekly Wage
7/1/04 - 6/30/05	\$567.87	
7/1/05 - 6/30/06	591.77	
7/1/06 - 6/30/07	619.97	
7/1/07 - 6/30/08	636.15	
7/1/09 - 6/30/10	664.72	
7/1/10 - 6/30/11	669.64	
7/1/11 - 6/30/12	695.78	
7/1/12 - 6/30/13	712.55	
7/1/13 - 6/30/14	721.66	
7/1/14 - 6/30/15	735.37	
7/1/15 - 6/30/16	749.06	

Maximum Rate Death Benefit:

The greater of \$250,000 or 20 years
Effective 2/1/06 – the greater of
\$500,000 or 25 years

Temporary Total Disability (TTD) Rate:

66-2/3% (.667) x AWW

Permanent Partial Disability (PPD) Rate:

60% (.6) x AWW

*Number if children and/or spouse = number of dependents

Minimum TTD & PPD	Single	Married	1 DEP.	2 Dep.	3 Dep.	4+ Dep.
TTD & PPD 7/15/10 - 7/14/16	\$220.00	*	\$253.00	\$286.00	\$319.00	\$330.00

For Injuries Occurring	Before 7/20/2005	7/20/2005 - 11/15/2005	11/16/2005 - 1/31/2006	2/1/2006 - 6/27/2011	On or after 6/28/2011
Disfigurement	150	162	150	162	162
Thumb	70	76	70	76	76
First (Index) Finger	40	43	40	43	43
Second (Middle) Finger	35	38	35	38	38
Third (Ring) Finger	25	27	25	27	27
Fourth (Little) Finger	20	22	20	22	22
Great Toe	35	38	35	38	38
Each Other Toe	12	13	12	13	13
Hand	190	205	190	205	205
Carpal Tunnel Due To Repetitive Trauma					28.5 - 57
Arm	235	253	235	253	253
Amputation Above Elbow	250	270	250	270	270
Amputation At Shoulder Joint	300	323	300	323	323
Foot	155	167	155	167	167
Leg	200	215	200	215	215
Amputation Above Knee	225	242	225	242	242
Amputation At Hip Joint	275	296	275	296	296
Eye	150	162	150	162	162
Enucleation Of Eye	160	173	160	173	173
Hearing Loss Of One Ear (Under WC Act)	50	54	50	54	54
Hearing Loss Of Both Ears (Under WC Act)	200	215	200	215	215
Testicle--1	50	54	50	54	54
Testicle--2	150	162	150	162	162

The law places a value on certain body parts, expressed as a number of weeks of compensation for each part

Disclaimer:

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

Advertising Material

CHICAGO OFFICE:

200 N. LaSalle Street
Suite 2700
Chicago, IL 60601
Tel: 312.377.1501
Fax: 312.377.1502

INDIANA OFFICE:

833 West Lincoln Highway
Suite 210
Schererville, IN 46375
Tel: 219.488.2590
Fax: 219.213.2259

MEMPHIS OFFICE:

1661 International Place Drive
Suite 400
Memphis, TN 38120
Tel: 901.753.5537
Fax: 901.737.6555

ATLANTA OFFICE:

P.O. Box 800022
Roswell, GA 30075
Tel: 770.653.1441
Fax: 678.352.0489