



BRYCE DOWNEY & LENKOV
LLC

Workers' Compensation Newsletter September 2015

Upcoming Webinar!
9/24/15
Reducing Litigation Costs
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THE TOP 5 LIST

Top 5 Things You Should Do To Prepare To Testify

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov
Workers' Compensation Department

Most cases settle. However, if your case goes to trial and you are called to testify, your testimony will be key to obtaining a win. Here are 5 things to remember:

1/Prepare

While it is a cliché, it is true: there is no substitution for preparation. Know your file. Not only will it impress the arbitrator, but you will be able to base your testimony on the facts.

2/Bring Your File

No one is expected to remember everything. Bring your entire file, including any relevant incident reports, photos, etc. that will assist your testimony.

3/ Dress Appropriately

Another cliché is that first impressions matter, but it is also true. What you say may get lost if you appear unprofessional and unkempt.

4/Practice

While you do not want to appear robotic on the stand, you do want to prepare the questions and answers beforehand. Make sure your attorney reviews your testimony with you. Also, do this on your own, in front of a mirror, until you are comfortable testifying.

5/Be Confident

This is probably the most important advice I can give you. It is important to know the facts well and testify confidently about them. Don't equivocate. Look the arbitrator and opposing counsel in the eye. Speak loudly and clearly. If you are right, but cannot communicate your side effectively, you will lose.



By: [Michael Milstein](#)



Last month, SB0162 was passed in the Senate Judiciary Committee.

Immediately following the Committee vote, it

was presented to the entire Senate and passed 39-19 on a partisan vote. The bill is currently with the House Rules Committee, along with competing bill, HB4223.

Workers' compensation reform is a "hot-button" issue for Governor Rauner and the legislature. We anticipate continued debate and movement on these issues as the year progresses.



SOUND BITE: ALAN DERSHOWITZ

On Legal Face-Off's recent episode, Harvard Law Professor Alan Dershowitz discussed Donald Trump's proposal to deport children of undocumented workers. Professor Dershowitz also makes headlines by accusing the Obama Administration of a cover-up in the Iran nuclear deal.

Rich: Before we get to the Iran deal, we want to jump into the birthright citizenship issue that was raised this week by Donald Trump. He came out and said that if he were elected president, he would try to overturn the 14th Amendment which gives the right to anyone who was born in the U.S. citizenship... is that true, can that happen Professor?

Professor Dershowitz: I can't imagine that happening. The words of the 14th Amendment are pretty clear, anyone born and subject to the jurisdiction to the U.S [is a U.S. citizen]. Now article 5 says that congress can implement the 14th Amendment by legislation but I don't think congress can undercut it. We don't know exactly what "subject to the jurisdiction" means, but generally it would mean a person born to illegal immigrants who lived here, is subject to jurisdiction by the United States.

Jason: Let's just say hypothetically, Trump is in the White House and he wants to appeal the 14th Amendment, what's the process?

Professor Dershowitz: It would be impossible to appeal the 14th amendment...

Rich: Professor Dershowitz, why are you so strongly opposed to the Iran deal?

Professor Dershowitz: ...I am now prepared to use a word that I rarely use, but I am prepared to use the word "cover-up." I believe the Obama administration is engaged in a cover-up. I believe that they knew what was in that side deal [between Iran and nuclear inspectors] and they deliberately refrained from actually reading it and having possession of it so that they can tell congress "we haven't read it, we don't have it, so we can't give it to you."

[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
- Jared Fogle
- Michael Jordan's Infringement Case
- King Conditions at Amazon
- Iran Nuclear Deal
- Donald Trump, Illegal Immigrants

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](#)

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Annual WCDI Conference On Multi-State Workers' Compensation Laws



IS WORKPLACE STRESS COMPENSABLE?

By: [Maital Savin](#)



Last month, *The New York Times* published an expose of Amazon's workplace culture. The article described 80-hour workweeks, employees crying at their desks, late night emails (followed by text messages if employees did not respond) and a competitive employee ranking system. The article featured

stories of employees who were diagnosed with cancer who were given low performance ratings after returning from treatment. Also featured was a story of a female employee who recently miscarried twins whose boss told her that perhaps Amazon was not the right place for her as she was trying to start a family.

Is the type of stress experienced by employees of Amazon ("Amabots") compensable? In Illinois, the answer is "no." The Commission has found that garden-variety stress is simply not compensable. Stress, without a physical injury, is only compensable if there is a sudden, severe, emotional shock, traceable to a definite time and place. An example of a compensable stress claim is an employee who is not physically injured, but experiences stress as a result of observing a coworker being shot to death. While Amazon's workplace seems a little more stressful than most, it is similar to many other workplaces.

Although employers can rest easy knowing that everyday stress does not give rise to a compensable workers' compensation claim, employers should consider other legal issues that may result from workplace cultures similar to Amazon's, which may create exposure for ADA, FMLA and Title VII discrimination claims.



On **8/26/15**, **Rich Lenkov**, **Justin Nestor** and **Maital Savin** presented at the Annual WCDI Conference on Multi-State Workers' Compensation Laws in Orlando, FL.

Upcoming Seminars

- On **9/16/15**, **Geoff Bryce** will present "Mechanics' Liens In Illinois" to the National Business Institute. [Click Here](#) for more info and to register
- 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 **10/21/15**, **Rich Lenkov** will present "Closing Difficult Cases: Dealing w/Difficult Clients" for [CEU Institute](#)
- On **10/28/15**, **Rich Lenkov** will present to the Illinois Manufacturers' Association. He will discuss negotiation strategies and causation in Illinois workers' compensation claims
- On **10/29/15**, **Tim Alberts** will present "Effective Statements" in Des Moines, IA for [CEU Institute](#)

Commission Refuses To Award Respondent Costs Of Four Failed IMEs



By: [Jeanmarie Calcagno](#)

In *Haynes v. Most Valuable Personnel*, 13 IL. W.C. 29626 (Ill. Indus. Comm'n 2015), the Commission addressed whether Respondent was entitled to receive a credit for charges it incurred when Petitioner failed to attend multiple IMEs.

At trial, Respondent presented evidence that it provided notice of the IME and travel expenses to Petitioner as required by the Act. Nevertheless, Petitioner failed to attend four IMEs. As a result, Respondent incurred charges of \$1,400.00. The Commission refused to award Respondent credit for the charges, holding that the Act did not provide for such a credit.

Practice Tip:

As this is only a Commission level case, respondents should continue to seek credit for charges incurred by petitioners failing to attend IMEs.

Liability For Medical Treatment

By: [Sadiq Shariff](#)



In *Arroyo v. Bretford Manufacturing Inc.*, 23 IL. WC. 107 (Ill. Indus. Comm'n 2015), the Commission addressed the reasonableness, necessity and causal relationship of medical treatment.

After twisting his low back at work, Petitioner underwent conservative treatment and eventually underwent surgery. Petitioner underwent chiropractic treatment for nearly two years. Although he returned to regular duty work during this time, Petitioner testified that his pain continued. The arbitrator awarded benefits, but found the chiropractic treatment was not reasonable, necessary or causally related to the work accident.

The Commission affirmed the denial, finding neither party liable for the chiropractic treatment. The Commission noted that Petitioner continued to have pain, tenderness and muscle spasms throughout his chiropractic treatment.

Practice Tip:

Keep a close eye on medical treatment, paying particular attention to whether a claimant's condition improves. Employers do not have to pay for treatment that is not reasonable, necessary or causally related to a work accident. This is especially true with chiropractic care.

Did You Know?

In addition to workers' compensation, we also handle:

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



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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 8/20/15 webinar, "You Asked For It, You Got It: Your Most Requested WC Questions Answered"

"I love the approach of discussing the most frequently asked questions."

"Good background on case law, especially Preferred Provider."

"Relevant topics, one of our participants wasn't aware of the PPP."

"The topic was interesting and hit close to some current issues I am facing."

"I like the light heartedness and fun One Direction pics and graphics."



Upcoming

9/24/15

Reducing Litigation Costs
Rich Lenkov

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Recent

- More Top 5 Lists
- Our Hottest Illinois Workers' Compensation Top 5 Lists
- Fighting Fraud Claims
- Accident Denials
- Causation In Illinois Workers' Compensation



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

Cutting Edge Legal Education

If you would like us to come to you 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



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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 |

| Effective Dates | Maximum PPD |
|------------------|-------------|
| 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 |

Minimum Rate Death & Total Permanent Disability:

50% of the Statewide Average Weekly Wage

Maximum Rate Death Benefit:

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

Temporary Total Disability (TTD) Rate:

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

Permanent Partial Disability (PPD) Rate:

60% (.6) x AWW

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

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

| For Injuries Occurring | Before 7/20/05 | 7/20/05 - 11/15/05 | 11/16/05 - 1/31/06 | 2/1/06 - 6/27/11 | On or after 6/28/11 |
|--|----------------|--------------------|--------------------|------------------|---------------------|
| Disfigurement | 150 | 162 | 150 | 162 | 162 |
| Thumb | 70 | 76 | 70 | 76 | 76 |
| First (Index) Finger | 40 | 43 | 40 | 43 | 43 |
| Second (Middle) Finger | 35 | 38 | 35 | 38 | 38 |
| Third (Ring) Finger | 25 | 27 | 25 | 27 | 27 |
| Fourth (Little) Finger | 20 | 22 | 20 | 22 | 22 |
| Great Toe | 35 | 38 | 35 | 38 | 38 |
| Each Other Toe | 12 | 13 | 12 | 13 | 13 |
| Hand | 190 | 205 | 190 | 205 | 205 |
| Carpal Tunnel Due To Repetitive Trauma | | | | | 28.5 - 57 |
| Arm | 235 | 253 | 235 | 253 | 253 |
| Amputation Above Elbow | 250 | 270 | 250 | 270 | 270 |
| Amputation At Shoulder Joint | 300 | 323 | 300 | 323 | 323 |
| Foot | 155 | 167 | 155 | 167 | 167 |
| Leg | 200 | 215 | 200 | 215 | 215 |
| Amputation Above Knee | 225 | 242 | 225 | 242 | 242 |
| Amputation At Hip Joint | 275 | 296 | 275 | 296 | 296 |
| Eye | 150 | 162 | 150 | 162 | 162 |
| Enucleation Of Eye | 160 | 173 | 160 | 173 | 173 |
| Hearing Loss Of One Ear (Under WC Act) | 50 | 54 | 50 | 54 | 54 |
| Hearing Loss Of Both Ears (Under WC Act) | 200 | 215 | 200 | 215 | 215 |
| Testicle--1 | 50 | 54 | 50 | 54 | 54 |
| Testicle--2 | 150 | 162 | 150 | 162 | 162 |

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

Disclaimer:

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