



BRYCE DOWNEY & LENKOV  
LLC

## Workers' Compensation Newsletter November 2015

Upcoming Webinar!  
11/19/15

Crossing The Border: Top  
5 Issues In Illinois &  
Indiana WC

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### THE TOP 5 LIST

## Top 5 Questions You Should Ask Your Defense Counsel

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov Workers' Compensation Department

In last month's column, I gave you 5 questions you should ask before hiring a lawyer to handle your claims. Here are some questions that you should ask after you have hired that attorney:

### 1/How Did The Latest Event Affect The Case?

Anyone can report on how a site inspection, deposition, pretrial or other significant event went. However, your defense counsel owes you more than a simple report. Your counsel should also explain the impact of an event on the case.

### 2/How Much Will This Cost?

Most attorneys will give you a budget at the start of the case. However, it will not help you a year later when you have to go to your boss and explain why your litigation costs exceed your reserves. Defense counsel must continuously keep you updated regarding how much you are spending and why.

### 3/What Is Your Closure Plan Of Action?

Every step that you and defense counsel take in a case must be towards closure. The claim is not going to get cheaper as it continues. Your defense counsel has to be laser-focused on the goal of closing the case as quickly and as cheaply as possible.

### 4/What Else Can We Be Doing To Close The Case?

Your counsel needs to think outside the box. You do not want worthless status updates telling you that nothing is going on with the case and it was simply continued. Your attorney needs to be filing motions to dismiss, obtaining trial dates and using tools like mediation and settlement days to close the case ASAP.

### 5/What Are My Chances Of Success?

A lot of attorneys don't want to go out on a limb and tell a client how likely it is that a given plan of action will succeed. It is our job as defense counsel to take that stand. Do not accept wishy-washy opinions or ones that shift responsibility to you. You are paying your defense counsel to provide their expertise, so demand that they do so.



By: [Michael Milstein](#)



The current budget crisis is entering its 5<sup>th</sup> month and there has been only legislation to resolve the issue.

Given the inability to compromise on any of the budget issues, it is unlikely to think that serious workers' compensation reform can be achieved in this environment. All current proposed legislation remains in the committees.



#### SOUND BITE: MIKE ZALEWSKI

On Legal Face-Off's recent episode, Illinois State Representative Mike Zalewski joined Rich to discuss his first-in-the-nation legislation regulating daily fantasy sports.

**Rich Lenkov:** Rep Zaleski, good morning and thanks for joining us. There's been a lot of talk lately about daily fantasy sites like FanDuel and DraftKings. They've been all over the news. To be clear, your bill is not seeking to make these kinds of sites gambling, what you're doing is trying to impose some standards on people who use them and how they're being used.

**State Representative Mike Zalewski:** Yeah what we tried to do in this bill is create a best practice act. So right now there's a nebulous view of what daily fantasy sites are. Are they gambling? Are they a game of skill? So we created an act dealing with daily fantasy contests and then we defined how we want them to behave. Things like: preventing underage players from playing, protecting the money when it's deposited into the account and trying to develop a protocol when you see someone playing maybe way too many times. Those are the types of things the bill does to protect players and allow people to enjoy the games.

**Rich:** To clarify, there's a federal law that says you cannot gamble on the internet if it involves playing a game a chance. In Illinois however, it's different. The law says that internet gambling is a game of chance or skill for money. Isn't that an important distinction?

**State Representative Mike Zalewski:** My understanding is our gambling statute is silent on daily fantasy and defines gambling as consideration + x = chance. There's a sanction on the laws right now that if you gamble over a telecommunication line you're guilty of a Class-A Misdemeanor. Our bill changes that and excludes daily fantasy from that definition.

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

#### Recent Topics:

- Halloween-Themed Lawsuits
- Fantasy Draft Legislation
- Barbara Byrd-Bennett
- Dennis Hastert secrets
- Lamar Odom
- Gun store negligence

#### Recent Guests

- Alan Dershowitz, Professor of Law, Emeritus, Harvard Law School
- Illinois State Representative Mike Zalewski
- NIU College of Law Professor Yolanda King
- Former Chicago Public Schools Inspector General James Sullivan
- Former Assistant United States Attorney Jeffrey Kramer
- Attorney Gloria Allred

[Legal Face-Off: Halloween-Themed Lawsuits, Fantasy Draft Legislation, Derrick Rose, Dennis Hastert's Guilty Plea and More](#)

[Legal Face-Off: Barbara Byrd-Bennett, Dennis Hastert, Lamar Odom, Gun Store Negligence And More](#)

[Legal Face-Off: Dennis Hastert Secrets, Illinois Lottery Legislation, Derrick Rose Sexual Assault Case, CEOs Behaving Badly](#)

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## Rich Lenkov At Ohio RIMS Conference

On 11/4/15, **Rich Lenkov** and **Mitchell Dane-Henry** presented "Legal Issues Presented By Millennials" at the Central Ohio RIMS Partner Day. They covered flexible work schedule issues, distracted driving liability, practical obstacles and claims investigations.



## Hiring Do's And Don'ts

On 11/5/15, **Storrs Downey** and **Maital Savin** presented "Hiring Do's And Don'ts (With Video Examples.)"



## Upcoming Seminars

- On 11/19/15, **Justin Nestor** and **Kirsten Kaiser Kus** will present "Crossing The Border: Top 5 Issues In Illinois & Indiana WC." [Click Here](#) for more info and to register
- On 12/15/15, **Geoff Bryce** and **Maital Savin** will present "Is Your Independent Contractor Actually An Employee." [Click Here](#) for more info and to register

- On 1/13/16, **Tim Alberts** will present "Effective Statements." in Des Moines, IA for [CEU Institute](#)

## Rauner Unveils Proposal To Sell The Thompson Center

By: [Jessica Rimkus](#)



Gov. Bruce Rauner recently proposed a plan to sell, and likely demolish/rebuild, the James R. Thompson Center, located in the Chicago Loop. The Thompson Center currently houses the Illinois Workers' Compensation Commission. Rauner explained, "For the people that work here...it's hard to move through the building, very ineffective, noise from downstairs, smells from the food court all get into the offices."

The open air atrium and glass panel design of the building has proved inefficient to maintain, heat and cool, at the costly price of \$100 million. The Thompson Center was built in 1985, designed by architect Helmut Jahn. Jahn remarked that he and former Gov. James Thompson shared a vision that the building would be a "symbol for the openness and transparency of the state government...a lively urban and public place." That goal, according to Jahn, "has not been upheld by the administrations that followed."

Under Rauner's plan, the building will be sold at a public auction. An estimated 2,200 state workers would be sent to other state-owned property in Chicago and Springfield. These moves could save taxpayers \$6-12 million a year. Rauner aims to have the transaction completed in one year and says that site appraisals are in process.



# Petitioner's Lack Of Sufficient Job Search Dooms Permanent Total Disability Claim

By: [Ed Jordan](#)



In *Brice v. City of Chicago* 23 ILWCB 139 (Ill. W.C. Comm. 2015), the Commission recently held that Petitioner failed to demonstrate a credible job search and denied his claim for permanent total disability benefits. Instead, the Commission awarded Petitioner permanent partial disability benefits for 15% loss of use of man as a whole and 3% loss of use of the leg, resulting in a significantly lower award.

Petitioner worked for the City of Chicago as a truck driver for over 16 years until he slipped and fell on ice, injuring his left knee and back. Petitioner was unable to return to work and given permanent work restrictions by his treating physicians, which the City was unable to accommodate. Petitioner underwent a self-directed job search and testified that he found job leads through classified ads. Petitioner also kept a job search log, but the log did not show a single application submitted to an employer. The Commission also noted that Petitioner did not begin the job search until one year after he was given permanent restrictions.

The Commission denied Petitioner's PTD claim, finding that Petitioner's job search was insufficient to establish that he did not have a stable labor market. The Commission also noted that Petitioner limited his job search by imposing his work restrictions on potential jobs.

## Practice Tip:

All aspects of Petitioner's job search should be questioned and investigated. A qualified vocational rehabilitation expert can prove that most petitioners who claim that they are permanently and totally disabled can find work and are employable

# Benefits Rolling Away

By: [Michael Milstein](#)



In *Daymon v. Vienna Correctional Center*, 23 ILWCB 135 (Ill. W.C. Comm. 2015), The Commission found a rolling chair injury not compensable. Petitioner alleged that he was filling in for another employee and sitting in a rolling chair when he reached for the phone and his chair "popped" out from under him,

injuring his back.

The Arbitrator denied benefits, finding that the chair simply rolled out from under Petitioner. The Commission affirmed, citing the neutral risk doctrine. A neutral risk is compensable when Petitioner is exposed to a quantitative or qualitative risk greater than the general public. The Commission noted that Petitioner was not working his regular job, so there was no higher quantitative risk. Additionally, as Petitioner failed to prove a defect caused by the employer, there was no qualitative risk either.

## Practice Tip:

It is Petitioner's burden to prove the compensability of his or her case. Sustaining an injury while working doesn't automatically provide a right to benefits.

# BDL Is Growing



Bryce Downey & Lenkov welcomes **Kevin Boroza**. Kevin received a Bachelor of Arts with a double major distinction at Indiana University. As a student at Northern Illinois University College of Law, Kevin focused on trial advocacy and workers' compensation. Kevin clerked for a year and a half at a plaintiffs' law firm in Chicago, gaining experience in all stages of litigation. In his free time, Kevin enjoys rooting for his favorite Chicago sports teams and spending time with family and friends.



## New Newsletter Editor



BDL would like to welcome Jessica Rimkus as the new Workers' Compensation Newsletter editor. We thank Maital Savin for her work on the newsletter.

## 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](#)
- [Entertainment Law](#)
- [Insurance Coverage & 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](mailto: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

#### Corporate & Construction

- How Can I Lower My Real Estate Taxes?
- Illinois Appellate Court Interprets Section 30 Of The Mechanics' Lien Act And Limits Recovery To Sub-Subcontractors

#### General Liability Update

- Illinois Appellate Court Holds Store Owner Not Liable For Trip And Fall On Adjoining Property
- Indiana Still Looking To Change Landscape For Medical Malpractice Actions

## Free Monthly Webinars

Here is what attendees had to say about our 11/5/15 webinar, "Hiring Do's And Don'ts (With Video Examples)"

"Well presented by the hosts. Very interesting situations were explored."

"Very informative, and I liked the question and answer part to it."

"Information relevant to today's hiring and legal climate."



### Upcoming

11/19/15

Crossing The Border: Top 5 Issues In  
Illinois & Indiana WC  
Justin Nestor  
Kirsten Kaiser Kus

[Click Here to Register](#)

### 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](mailto: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](mailto: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

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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.

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