



BRYCE DOWNEY & LENKOV  
LLC

## Workers' Compensation Newsletter January 2016

Upcoming Webinar!

1/27/16

WC Issues Raised By  
Millennials

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### THE TOP 5 LIST

## Top 5 Workers' Compensation Resolutions For 2016

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov Workers' Compensation Department

### 1/ Examine Your Accident Investigation Policy

A good defense starts at the ground level. By the time your defense counsel receives a questionable claim, it is often months or even years after the accident. By then, it can be too late to mount a successful defense. Resolve to work with your team members on the ground level to ensure that you interview key witnesses, document important facts and preserve evidence from the start.

### 2/ Make A Decision Quickly

If your employee has a legitimate claim, accept it, pay benefits and get them back to good health and work as quickly as possible. However, if they don't have a compensable claim, it is important to make that decision quickly as well and inform the employee of your denial. Waiting an inordinate amount of time or doing an indefinite "investigation" doesn't help you or the claim.

### 3/ Investigate Subrogation Early

Third party liability continues to be commonly overlooked, even though it is an excellent chance to recover money. Consider whether there is subrogation as early in the claim as possible, and proceed aggressively if there is as possibility of recovery.

### 4/ Use Your Resources

IMEs, UR, PPPs, Motions To Dismiss and surveillance are all effective tools in defending questionable claims. While they cost time, money and resources, they are invaluable tools in aggressively defending a claim in the right case.

### 5/ Get Perspective

Consider how your actions on the claim affect other claims. Treating legitimate claimants well, and aggressively fighting questionable or fraudulent claims is important not only on the present claim, but also for its ripple effect on other employees.



By: [Michael Milstein](#)



### NEW ARBITRATORS

Arbitrator **Ketki Steffan** was appointed as a Circuit Court Judge of Cook County and Arbitrator **Molly Dearing** resigned. Governor Rauner appointed **Paul Cellini** and **Gary Gale** to serve as arbitrators. Mr. Cellini was formerly a staff attorney with the IWCC. He has represented both Petitioners and Respondents, handling workers' compensation for 20 years. Mr. Gale is the former Executive Director of the IWCC. He previously worked at a workers' compensation defense firm.



#### SOUND BITE: JESSE JACKSON

On Legal Face-Off's recent episode, Rainbow PUSH Coalition Founder and President Rev. Jesse Jackson and Washington College of Law Professor, William Yeomans join Rich and Jason to discuss the continued aftermath of the release of the Laquan McDonald video.

**Rich Lenkov:** Breaking news this morning on the issue is the release of the Burger King video additional footage. Yet, it still has an 80 minute gap. What's your feeling on that gap and how that occurred?

**Rev. Jesse Jackson:** It's a part of the concealing of evidence and the cover-up. It's about the fear that this video would incriminate 3 persons of interest- the mayor, police chief and state's attorney. Apparently they saw the tape 13 months ago, a month before the election and determined it would be too much for the public to swallow so they held back on it.

**Rich Lenkov:** Speaking of state's attorney Anita Alvarez, what do you think should she have done differently when she got this tape 13 months ago?

**Rev. Jesse Jackson:** She should have charged the killer as she has done now 13 months later and also accomplices... Part of the culture of cover-up is police not telling on other police. Let me make it clear, we need good police. And police need people. We need trust between both. So long as these police engage this kind of behavior they will not gain the public trust.

**Rich Lenkov:** What do you think of her argument articulated as recently as yesterday, that these investigations take time? And because there is additional federal probe, it took additional time. Do you think that is a justification for waiting on the video?

**Rev. Jesse Jackson:** They resisted the federal probe. They resisted making public the tape. It does not take 13 months to conclude that someone shot unarmed, 16 times, that the killer should be charged and those who witnessed it have a role to play in giving honest testimony.

[Click Here To Listen To The Full Episode:](#)

<http://wgnplus.com/category/legal-face-off/>

#### Recent Topics:

- Syrian refugee crisis
- Obama's release of nearly 7,000 federal prisoners
- Charlie Sheen
- Taylor Swift
- Halloween-themed lawsuits
- Fantasy football legislation

#### Recent Guests

- Alan Dershowitz, Professor Of Law, Emeritus, Harvard Law School
- Illinois State Representative La Shawn K. Ford
- Professor Ron Rotunda, Professor Of Law, Chapman University
- Professor Robert Jones, Professor Of Law, Northern Illinois University
- Rev. Jesse Jackson, Rainbow PUSH Coalition Founder and President
- William Yeomans, Washington College Of Law Professor
- Michele Jawando, Vice President, Center For American Progress
- Attorney Gloria Allred

[Legal Face-Off: Recalling Rahm, Texas Affirmative Action Case, North Korean Human Rights Violations, The Importance Of Change Management To Lawyers, Star Wars Lawsuits And Much More In The Biggest Legal Face-Off Of The Year!](#)

[Legal Face-Off: Rev. Jesse Jackson and Professor William Yeomans on Laquan McDonald Video, Professor Alan Dershowitz, Palatine Transgender Case, Paul Walker Lawsuit](#)

[Legal Face-Off: Syrian Refugee Crisis, Obama's Release Of Nearly 7,000 Federal Prisoners, Charlie Sheen, Taylor Swift And Much More](#)

Please like us on [Facebook](#) and [subscribe in iTunes](#). Send us your questions and we will answer them on air—nothing is off limits.

## Upcoming Seminars

- On **1/13/16**, **Tim Alberts** will present "Effective Statements" in Des Moines, IA for [CEU Institute](#)
- On **2/11/16**, **Justin Nestor** will present "A Day In The Life Of A Workers' Compensation Claim" at the Sixth Annual Beyond Safety Conference & Expo. [Click Here](#) for more info and to register
- On **4/7/16**, **Rich Lenkov**, Eric Spalsbury (Director Of Risk Management, Stanley Steemer), Michelle Middendorf (Manager, Stanley Steemer) and Joe Skinger (Account Manager, CorVel Corporation) will present "Stratified General Liability Claims: Fast Tracking and Other Techniques" at the CLM 2016 Annual Conference in Orlando, FL. [Click Here](#) for more info and to register

## Increased Risk In High Crime Neighborhood

By: [Kevin Borozan](#)



In *White v. Illinois, State of/Dept. of Employment Security*, 23 ILWCLB 179 (Ill. W.C. Comm. 2015), the Commission determined that Petitioner's injuries from a gunshot wound, suffered while on break and off work premises, arose out of and in the course of his employment.

Petitioner, an adjudicator for the Illinois Dept. of Employment Security, walked to a nearby store while on break. Petitioner testified that the Belleville neighborhood surrounding his employer's offices was violent, with heavy police activity. Petitioner was subsequently shot in front of his employer's offices. He filed for workers' compensation benefits, contending that he was at an increased risk because of the neighborhood where his workplace was located.

The arbitrator found that Petitioner was at an increased risk when he was shot due to working in a high crime area. Therefore, Petitioner sustained an accident arising out of his employment. The arbitration decision was affirmed by the Commission.

### Practice Tip:

When assessing an increased risk case, be sure to consider whether the risk encountered is one to which the general public is equally exposed.

## Employee's Fall In Bathroom Not Compensable

By: [Maital Savin](#)



In *Rios v. Union Health Service*, 23 ILWCLB 181 (Ill. W.C. Comm. 2015), the Commission denied benefits to an employee who fell at work in the employer's restroom.

After using the restroom at work, Petitioner, a nursing clerk, stood up and fixed her clothes. At trial, Petitioner testified that she stepped forward to open the bathroom stall door and slipped in water, striking her low back on the toilet and falling onto her right side. She reported the incident to a security guard. The security guard inspected the bathroom with Petitioner but did not find any water on the floor.

Petitioner argued that the water in the bathroom exposed her to a greater risk of injury than the general public. She alleged that the security guard immediately called maintenance so that when she and the security guard arrived at the bathroom, the water had already been cleaned up. However, Respondent argued there was no water where Petitioner fell, rendering the accident non-compensable. The arbitrator found Petitioner more credible than the security guard and awarded benefits.

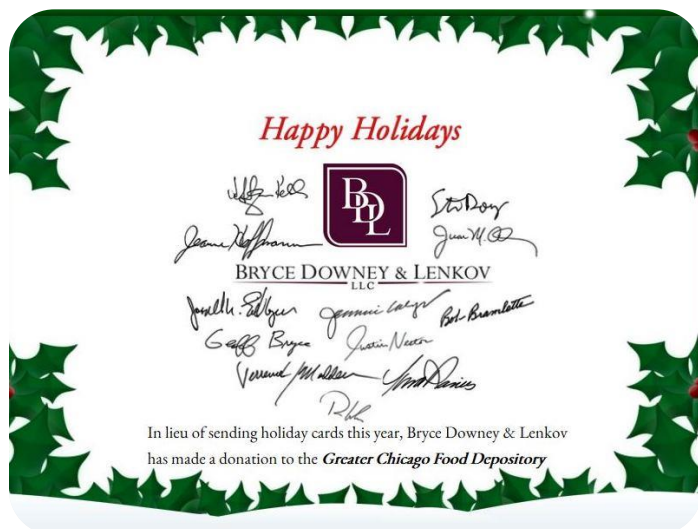
The Commission reversed, denying benefits. The Commission found the security guard credibly testified that he inspected the bathroom before Petitioner arrived and found no water on the floor or on Petitioner's clothing. The Commission reasoned that Petitioner's fall while getting up from the toilet was not in furtherance of her job and, therefore, she failed to prove that her accident arose out of her employment.

### Practice Tip:

Prompt investigation is critical in every case and was the key to Respondent's success in this case.

## Giving Back

### BDL Donates To The Chicago Food Depository



This year, BDL donated to the Greater Chicago Food Depository in lieu of sending [holiday cards](#). This non-profit organization provides training and food to those in need as an effort to end hunger. They focus on ensuring healthy food options for people in need, community-based responses to ending hunger and mobilizing the public to end hunger. This past year they gathered 11.7 million pounds of high-quality food and delivered it to food pantries, soup kitchens and shelters. They also distributed 68 million pounds of food. [Click here](#) to learn more about the Greater Chicago Food Depository.

## Did You Know?

In addition to workers' compensation, we also handle:

- [Business Litigation](#)
- [Business Transactions & Counseling](#)
- [Corporate/LLC/Partnership Organization & Governance](#)
- [Construction](#)
- [Employment & Labor](#)
- [Entertainment Law](#)
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- [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 [jklia@bdlfirm.com](mailto:jklika@bdlfirm.com).

#### Labor & Employment Law

- DOL's Aggressive Interpretations Finds Most Workers are Employees Rather Than Independent Contractors Supreme Court Weighs in on Pregnancy Discrimination
- Seventh Circuit Finds FedEx Drivers Were Employees, Not Independent Contractors

#### 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

What you said about our 12/10/15 webinar,  
"Ask A WC Attorney Anything"

*"As always, I liked the quiz & contest."*

*"Very good information -  
nice to know someone who knows what to do in the field of IL WC."*

### Upcoming

1/27/16

WC Issues Raised By Millennials

Rich Lenkov

Maital Savin

[Click Here to Register](#)



### Recent

- Interviewing And Hiring: Best Practices With Video Examples
- WC Horror Stories
- Reduce Your Legal Expenses NOW!
- You Asked For It, You Got It: Your Most Requested WC Questions Answered
- More Top 5 Lists

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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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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Fax: 678.352.0489

# PPD Benefits Schedule Of Body Parts

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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