



BRYCE DOWNEY & LENKOV
LLC

Workers' Compensation Newsletter March 2016



THE TOP 5 LIST

Top 5 Things An Employer Should Do The Day They Receive Notice Of A Work-Related Injury

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov Workers' Compensation Department

In last month's newsletter, we talked about how to prevent an injury from happening. Despite our best efforts, however, injuries do happen. Here are the 5 things an employer should do the day they receive notice of a work related injury:

1/Talk To Your Employee

This is obvious, but still the most important thing you can do. Find out exactly what happened, directly from the source. Do this as early as possible, when your employee's memory is fresh. Secure the claimant's version of events, especially if the claim is questionable.

2/Talk To Co-workers

While it's important to get the potential claimant's version, it is equally important to verify their story from co-workers. This is especially true if they witnessed the incident.

3/Correct Hazardous Conditions

From a safety and a legal perspective, it's important to correct any conditions that may pose a hazard to other employees.

4/Take Care Of Paperwork

Complete any relevant paperwork, including internal or state-mandated incident reports.

5/Report The Incident

Of course, you don't have to report every incident to your attorney. However, for certain claims, getting your counsel, carrier and other partners involved early can help protect your interests down the road.

Upcoming Webinar!

3/24/16

Is There Really No
Discovery In Illinois WC?

[Click Here to Register](#)



By: [Michael Milstein](#)



Over a month since Governor Rauner's State of the State Address, it doesn't appear that Illinois is any closer to reaching a budget deal or workers' compensation reform agreement. The Governor and advocates of reform are seeking the following major changes:

- 1) Modifying the causation standard to "major cause"
- 2) Defining travelling employees
- 3) A new medical fee schedule

The budget impasse has yielded statewide consequences which have also affected the IWCC. For example, recently an arbitrator's personalized date-stamp broke and was not replaced because the supplier was awaiting payment on a \$511.06 past due invoice from the IWCC.

It remains to be seen whether the Governor and his supporters will have the political capital to put through the changes they seek.



SOUND BITE: Nick Berardini, director of [Killing Them Safely](#)

On Legal Face-Off's 3/4/16 episode, Rich Lenkov and Nick Berardini discussed taser liability.

Rich Lenkov: Speaking legally, one thing that interested me in your movie was the one case that actually went to verdict. The one you depicted in the film. The jury comes back and awards \$6 million. The company is very boastful, very proud of the fact that they reduced it to something like \$175,000. Can you tell us about that verdict?

Nick Berardini: Yes, they used it as a big piece of armor, that they have been successful in all these product liability cases for a very long time. Anyone with a basic understanding of the civil tort system can understand how difficult product liability cases are to begin with. It's sort of bad judgment when you look at a company's record because it's of course inherently designed, and should be inherently designed, to protect the company from a liability perspective. A lot of these cases end up getting dismissed. In taser's case because of technicalities. It's not really suggesting that the weapon *didn't* kill the person and yet from their perspective, that counts as a win. So it was a bit misleading. Finally, these lawyers came along and found a blue print for how to navigate the product liability system and actually become successful.

Nick Berardini: The first case was the case of Robert Heston who was tasered for 75 sec over 20 times by 3 different officers. What was so fascinating about that case was that it proved this theory, at least in court, of metabolic acidosis; that if you're tasered for that long your blood can become acidic if the officers are pressing against your back and holding you on the ground... But, what had happened, was it

opened the door now for these 2 lawyers to sort of figure out how they can navigate the product liability bar and bring additional cases. What they started doing, which I think was absolutely a game changer, was finding cases where there were no other factors. They changed the mechanism they were proving in court. It became direct cardiac capture leading to cardiac arrest because of the electricity of the weapons... What they were able to show was that in 2006 the company knew about this risk from its own internal testing and had not warned officers about it. And that's when they started to open the flood gates a little bit. They've been pretty successful suing them ever since.

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

Recent Topics:

- O.J Simpson Movie
- Documentary About Tasers- Killing Them Safely
- Crimes Against Children
- U.S. vs. Apple
- Sandra Bland's Family's Attorney

Recent Guests

- Alan Dershowitz, Professor Of Law, Emeritus, Harvard Law School
- Nick Berardini, Director Of Killing Them Safely
- Kim Goldman, Author Of Media Circus: A Look At Private Tragedy In The Public Eye
- Andy DeVooght, Loeb & Loeb & Former US Supreme Court Clerk
- Attorney Gloria Allred

[Kim Goldman Discusses OJ Simpson Movie, Texas Abortion Case In Supreme Court, Documentary About Tasers, FanLyst President On Ticket Resale Market, Kesha, Erin Andrews And More On This Week's Legal Face-Off!](#)

[Supreme Court Panel, Child Predators, US vs. Apple, Fake Doogie Howser And More](#)

[Lucas Museum Lawsuit, Sandra Bland's Attorney, Blagojevich Author, Inside Out Columnists, Cosby, OJ Simpson And 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.

Geoff Bryce To Receive Martin Luther King Jr. Drum Major Honor



Geoff Bryce will be awarded the Martin Luther King Jr. Drum Major Honor. This award was created based on Martin Luther King's "Drum Major Instinct" sermon about the desire to lead with selfless motives. "Yes, if you want to say that I was a drum major,

say that I was a drum major for justice; say that I was a drum major for peace; I was a drum major for righteousness. . . We all have the drum major instinct." Geoff Bryce is being recognized for his philanthropic efforts and pro bono work.

Rich Lenkov To Receive 2016 NIU Alumni Association Award



Rich Lenkov has been honored with the 2016 NIU Alumni Association Award for its College of Law. Each year, 7 exemplary Alumni are chosen to represent NIU's seven colleges, highlighting their diverse disciplines. Alumni are chosen based on outstanding professional accomplishments, civic, cultural

and charitable involvement.

Upcoming Seminars

- On **4/7/16**, **Rich Lenkov** will present "Stratified General Liability Claims: Fast Tracking and Other Techniques" at the CLM 2016 Annual Conference in Orlando, FL with:
 - Eric Spalsbury (Director Of Risk Management, Stanley Steemer)
 - Michelle Middendorf (Manager, Stanley Steemer)
 - Joe Skinger (Account Manager, CorVel Corporation)[Click Here](#) for more info and to register

Voluntary Rec Activities Not Compensable

By: [Jessica Rimkus](#)



In *Darin v. IWCC*, (Ill. App. Ct. 3rd 2015), Petitioner, a fire chief, sustained injuries during a physical fitness program offered by Respondent to employees. Petitioner testified that he was told by his supervisor to enroll in the "Fall Fitness Challenge" program to stay fit and set an example for firefighters under

his command. The supervisor admitted to encouraging Petitioner's participation but denied ordering him to do so.

The arbitrator found that Petitioner failed to prove a compensable accident because his injuries occurred during a voluntary recreational activity that he was not ordered to perform. The Commission affirmed, and the Circuit Court confirmed the Commission decision.

On appeal, the Appellate Court affirmed, noting that the fitness program promoted healthy lifestyle changes. Petitioner's description of the activities fell within the definition of "athletics," which the court deemed a recreational activity from which compensation is precluded. Further, Petitioner failed to show that he was ordered or assigned to participate in the program. There was no evidence that Petitioner would have suffered any repercussions from refusing to participate.

Practice Tip:

Not all workplace activities are considered work-related. When extracurricular activities are offered to employees, employers can limit liability by expressly indicating the voluntariness of the activity.

Racial Slurs Not Compensable

By: [C.Matt Alva](#)



In *Miller v. Chicago Transit Authority*, (Ill. W.C. Comm. 2015), the Commission affirmed the arbitrator's decision denying benefits to a CTA worker alleging anxiety and post-traumatic stress disorder. Allegedly, a police officer yelled racial slurs at Petitioner for blocking traffic. The

court considered whether the yelling and racial slurs satisfied the sudden, severe and emotionally shocking standard to show a compensable mental-mental claim.

Petitioner was replacing a fellow driver in front of a police station. This process takes roughly 10 minutes and during the change-over, traffic became backed up. Two out-of-uniform police officers demanded that

Petitioner move the bus to get traffic moving. They allegedly banged on the side of the bus and one of them yelled racial slurs. After Petitioner completed the change-over, she testified that she was followed by the police and feared for her safety. Petitioner was diagnosed with post-traumatic stress disorder and filed a workers' compensation claim alleging the work incident led to her mental injury.

The arbitrator concluded that Petitioner failed to show that she was exposed to a sudden, severe and emotional shock. The court noted that racial slurs are not compensable in a mental-mental case. The arbitrator also noted that Petitioner should have anticipated backlash after blocking traffic and her fear of being followed was unreasonable.

Practice Tip:

Take an aggressive approach with any mental health claim. These claims are difficult to prove and should be challenged. Similarly, while racial slurs are repugnant, the Commission does not generally view these types of statements as satisfying the sudden, severe and emotional shock standard

Take A Load Off

By: [C.Matt Alva](#)

In *Bolingbrook Police Dept. v. IWCC*, (Ill. App. Ct. 3rd 2015), Petitioner, a police officer, was preparing to go to work when he lifted his "duty bag" and injured his back. The duty bag contained his helmet, handcuffs, ammunition, gas mask, other items, and weighed roughly 40 lbs. Officers were allowed to keep bags at work or bring them home.

The Arbitrator awarded benefits, finding that Petitioner was specifically engaged in an activity for the benefit of respondent. The Commission affirmed the arbitration decision. The Appellate Court affirmed the Commission's finding that Petitioner's injury arose out of and in the course of his employment. While acknowledging that the accident occurred at home, the Commission found that Petitioner was engaged in an activity that benefited Respondent and that it was reasonable to expect Petitioner to lift his bag. The key point noted by the Court was that having the bag was a required part of Petitioner's job. Allowing Petitioner the option of keeping the bag at home extended the workplace to Petitioner's garage when he was lifting the bag into his car.

Practice Tip:

Be sure to limit your liability by not allowing employees to bring required equipment home. If possible, make sure that any required equipment or activities are kept and performed only in the workplace.

Giving Back

Student Mock Trial Competition



On 2/20/16, [Kirsten Kaiser Kus](#) helped judge the National High School Mock Trial competition at the Hammond Federal Courthouse. Students were grouped into teams and prepared opening arguments, presented witnesses and evidence, made objections based on federal rules and presented closing arguments. This event gave students a great opportunity to expand their understanding of the legal system and enhance their critical thinking skills. This was in preparation for the state final competition, which will take place May 12-14. [Click Here](#) for more information.

Legal Prep 3-On-3

On 2/27/16, 2 BDL teams played in the Chicago Legal Prep 3-on-3 Tournament. Players, supporters, students and faculty gathered together for fun competition and supported their athletic program.

Chicago Legal Prep Charter Academy is Chicago's first and only legal-themed charter high school. Rich Lenkov proudly serves on Legal Prep's Advisory Board. Bryce Downey & Lenkov was proud to sponsor this event and support Chicago Legal Prep.



Cowtown Challenge



On 2/27-2/28/16, [Jeff Kehl](#) participated in the Cowtown Challenge in Fort Worth, TX. This is a 10K race followed by a half marathon to support C.A.L.F. The C.A.L.F. program is a Fort Worth children's charity educating children about the importance of creating a healthy lifestyle through physical fitness and nutrition.

Hustle Up The Hancock



On 2/28/16, Team BDL participated in Hustle up the Hancock. This year, Team BDL raised over \$4,200 for lung disease research, advocacy and education. Our best times were Robert Olszanski, Subpoena Clerk for the half climb (10:59-52 floors) and Jason Klika, Marketing Coordinator for the full climb (16:39-92 floors).

Team BDL Plunges



On 3/6/16, BDL Plunge Wars dove into icy Lake Michigan. This year, we raised over \$3,200 for Chicago Special Olympics. This was our 4th year braving winter temperatures at North Avenue beach to raise funds and awareness for Special Olympics Chicago. Special Olympics is the world's largest program for sports training and athletic competition for children and adults with intellectual disabilities.



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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

- Illinois & Federal Government Push Equal Pay Initiatives Seventh Circuit Finds FedEx Drivers Were Employees, Not Independent Contractors
- Lessons From Retaliatory Discharge Verdicts In Illinois & Indiana

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

- Cook County Circuit Court Rules Six-Member Jury Limitation Unconstitutional
- Illinois Appellate Court Upholds Summary Judgment Against Claim That A Defective Condition Was Exacerbated By A Natural Accumulation Of Water

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](#)
- [Insurance Coverage & Litigation](#)
- [Intellectual Property](#)
- [Medical Malpractice](#)
- [Professional Liability](#)
- [Real Estate](#)
- [Transportation](#)

Free Monthly Webinars

What you said about our 2/25/16 webinar, "What The Movies Can Teach You About Handling Workers' Compensation Claims"

*"Using the movies to help with workers' comp -
this is not a fun subject but you made it fun."*

*"Extremely informative and confirmed a lot of what we SHOULD already know but don't
always apply to our file handling."*

*"I thought the presentation was very creative. Having a theme to go along with the
information provided was brilliant! It kept me interested in each/every topic."*

*"The topic was interesting. I LOVE movies, and having the quotes correspond with different
handling tactics was very interesting, and inviting."*



Upcoming
3/24/16

Is There Really No Discovery In Illinois WC?

Rich Lenkov
Sadiq Shariff

[Click Here to Register](#)

Recent

- Crossing The Border
- Ask A WC Attorney Anything
- Interviewing And Hiring: Best Practices With Video Examples
- WC Horror Stories
- 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.

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 Retail, Restaurant & Hospitality Committee Mini-conference
- National Workers' Compensation and Disability Conference® & Expo
- SEAK Annual National Workers' Compensation and Occupational Medicine Conference
- 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
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
1/15/16 - 7/14/16	1,398.23	524.34	1,048.67

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	Maximum Rate Death Benefit: The greater of \$250,000 or 20 years Effective 2/1/06 – the greater of \$500,000 or 25 years
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	Temporary Total Disability (TTD) Rate: 66-2/3% (.667) x AWW
7/1/11 - 6/30/12	695.78	
7/1/12 - 6/30/13	712.55	Permanent Partial Disability (PPD) Rate: 60% (.6) x AWW
7/1/13 - 6/30/14	721.66	
7/1/14 - 6/30/15	735.37	
7/1/15 - 6/30/16	755.22	

*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.

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