



BRYCE DOWNEY & LENKOV
LLC

Workers' Compensation Newsletter July 2016

Upcoming Webinar!
7/28/16
Live WC Panel
Discussion
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THE TOP 5 LIST

Top 5 Ways to use an employee's actions to defend their workers' compensation claim

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov Workers' Compensation Department

1/ Violation of Safety Rule

If you can prove that an employee violated a known and enforced safety rule, you can defend their claim. You have to show that the violation of the safety rule took Petitioner outside the scope of his or her employment. We have successfully won cases at trial using this defense.

2/ Intoxication/Drug Use

If an employee tests positive for drugs or alcohol following an injury, the employer gets the benefit of the presumption that it was the drugs or alcohol that caused the injury, not work. This presumption is rebuttable, but the employee has a fairly high burden to overcome. As a practical matter, the positive drug or alcohol test should always be supported by a toxicologist's opinion in order to prevail on this issue at trial.

3/ Horseplay

An employee who is injured while engaged in horseplay does not recover. The more that the action was personal to the employee, rather than related to employment, the more likely it will be held to be horseplay rather than work-related.

4/ Fights

In order for a fight to be work-related, the claimant cannot be the one who started it and the fight must relate to a work issue. If Petitioner cannot prove either of these facts, you can successfully deny the claim.

5/ Detour

Generally, going to and coming from work is not compensable. An exception is for travelling employees, who are given greater latitude. However, if that travelling employee detours from a work-related activity into a personal activity, his or her injury will not be compensable.



By: [Michael Milstein](#)



After the flurry of activity last month, there was a sense of optimism that a budget deal would be reached soon. However, any

optimism was silenced after the legislature failed to reach an agreement at the end of May. Since then, the Illinois House of Representatives cancelled multiple sessions while the Senate has nothing scheduled.

Governor Rauner recently met with the Chicago Tribune Editorial Board, stating that he is ready to make a deal. He requested three policy changes: (1) modifications to the workers' compensation system, (2) more negotiating authority with unions for local governments and (3) pension reform. He also announced his intention to run for re-election in 2018.

Workers' compensation reform will be part of any deal struck, but it remains to be seen how far reaching those reforms will be.



SOUND BITE: Former Supreme Court clerk Andy DeVooght discusses Texas' restriction on abortion which was struck down by the court.

Rich Lenkov: Why do you think the court ruled in favor of overturning the Texas restriction on abortion?

Andy DeVooght: The reason Texas' requirements were struck down by the court is because five justices said the fifth circuit gave too much deference to the legislature in this notion that the restrictions made abortion safer. In fact, there's no evidence to suggest they made abortion any safer and that the only thing they did was have the effect of putting an undue burden on a woman's right to seek an abortion.

Rich: So the undue burden language was the key because that's the test when it comes to any laws that might restrict abortion. Justice Ginsburg writing in a concurrence for the majority talked about how abortion at these facilities is actually a safer procedure than things like liposuction. I thought her decision was very passionate. How did you take her writing in the concurrence?

Andy: She came out and really took charge of the oral argument, asking questions of the petitioner to frame the issue because she is very passionate about this. I think her opinion added that this case may be striking down Texas' particular restrictions, but she laid down the gauntlet that any state trying any restriction like this, that isn't actually tethered to making women safer, is not going to stand under our case law and is going to be found to be an undue burden.

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

Recent Topics:

- Corruption charges
- Texas' abortion restrictions
- Led Zeppelin's copyright verdict
- Kanye West

Recent Guests:

- Alan Dershowitz
- Andy DeVooght, former Supreme Court clerk, Loeb & Loeb partner
- Carolyn Shapiro, Illinois Solicitor General, former Supreme Court clerk
- Chief Jim Bueermann (Ret.), President of The Police Foundation

[Supreme Court panel, Led Zeppelin copyright verdict, Orlando PD's response and celebrity lawsuits](#)

[Stanford rape trial, extraditing "El Chapo", Muhammad Ali's estate, Illinois tort reform, Trump's attacks on judge](#)

[The Legal Prep Charter Academy, Benjamin Chaffee discusses Smokeless Tobacco, 'Inside Out' with David Susler and Christina Martini, and The Legal Grab Bag w/ Bill Cosby, Tom Brady and Drew Peterson's murder trial](#)

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 8/21-8/24/16, Rich Lenkov and Justin Nestor will present at the 71st Annual Workers' Compensation Educational Conference & 28th Annual Safety & Health Conference. [Click Here](#) for more info and to register
- On 9/15/16, Jeanmarie Calcagno will present **State Law -- Consequences And Outcomes** at the NAMSAP 2016 Annual Meeting & Educational Conference. [Click Here](#) for more info and to register
- On 9/23/16, Jeanmarie Calcagno will present "Lower Back Injury Claims" on behalf of [Lorman Educational Services](#)

Small Shoes Kick Claim

By: [Jessica Rimkus](#)



In *Dixon v. ADM*, 24 ILWCLB 57 (Ill. W.C. Comm. 2015), the Commission considered an injury that was allegedly sustained as a result of work attire. As a general laborer, Petitioner's dress code consisted of hard hats, safety glasses, gloves and steel-toed boots. He was required to wear the steel-toed boots at all times.

One day, Petitioner noticed blisters on both of his great toes, which worsened as he worked. His right toe became infected and eventually had to be amputated. Petitioner testified that he had never before experienced serious blisters from wearing his work boots. The arbitrator awarded benefits.

The Commission reversed, noting that the boots Petitioner purchased were too small for him. The blisters resulted because the boots were too small, not because they were steel-toed. Petitioner argued that his diabetic condition made him more susceptible to the blisters, but both the IME and treating physician agreed that people with diabetes may wear (properly fitting) steel-toed boots. Per the Commission, purchasing the correct-sized boots was within Petitioner's control and not his employer's.

Practice Tip:

Thorough investigation can yield case-turning details, such as Petitioner purchasing shoes that were, in fact, too small.

"Off-Work" Slips Alone Insufficient For Ongoing TTD

By: [Jeanmarie Calcagno](#)



In *Harding v. Casey's General Store*, 24 ILWCLB 62 (Ill. W.C. Comm. 2015), the Commission terminated Petitioner's entitlement to TTD benefits based upon the opinions of Respondent's IME doctor and the treater's failure to regularly examine Petitioner.

Petitioner, a cook, slipped and fell while working in a kitchen, injuring his back. Petitioner was initially released to light duty work and subsequently authorized by his physician to remain off work. The arbitrator awarded TTD benefits.

At arbitration, Respondent presented its IME and addendum reports. The addendum addressed records that were not available at the time of the first examination. The new records included an MRI and the results of a neurological examination.

Based on the IME opinion, the Commission terminated TTD benefits subsequent to the addendum report. In terminating benefits, the Commission gave greater weight to Respondent's IME opinion, which was based on both a physical examination and review of the medical records versus the opinions of the treating physician, which were not based on any objective findings or regular physical examinations. The Commission noted that the treater appeared to merely release regular off-work slips without examining Petitioner for long time periods.

Practice Tip:

Never rely solely on a treater's off-work slip in your determination of whether TTD is owed. Always obtain a full and complete set of medical records. Also, when requesting records, be sure to obtain the diagnostic films for your examiner's review.

Remembering Terrence J. Madden



We are saddened to report that our longtime Capital Member, Terry Madden, has passed away. Terry was a legal scholar, superb trial lawyer and excellent appellate advocate. He had a passion for golf, the Goo Goo Dolls band and in his earlier days was an accomplished skydiver. Terry will be missed not only for his legal skills but also his quick wit and common sense approach to all things.

Giving Back

Congratulations to the Chicago Legal Prep Class of 2016

On 6/4/16, Legal Prep Charter Academy Advisory Board Member Rich Lenkov attended the school's first graduation ceremony. U.S. Court of Appeals Judge Ann C. Williams delivered the keynote address.

Legal Prep, founded in 2012, is Illinois' only legal-themed high school and one of the only of its kind in the world. Its population is made up of 98% minority students and located in one of Chicago's most economically challenged neighborhoods. A remarkable 100% of Legal Prep's graduating seniors have been accepted into college.

For more information on Legal Prep Charter Academy, visit <http://www.legalprep.org/>.



Northern Illinois University Law Golf Outing

Rich Lenkov and Bryce Downey & Lenkov LLC proudly sponsored NIU's 12th Annual Law Golf Outing at the River Heights Golf Course on 6/3/16. Proceeds from the event were donated to NIU's Alumni Council Scholarship, which is awarded to a third-year student at graduation. Rich serves on NIU's Board of Visitors.



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 7/1/16 webinar,
"The 5 Factors Determining Illinois Permanency:
What Do They Really Mean?"

"The webinar was very interactive. That is key to holding people's attention."

"As always, these webinars are very informative and helpful."

"Very informative. I'm new to settling Illinois claims so it was nice to get a more in-depth perspective on where the numbers we offer come from and how the arbitrators and commission view these cases."

"I appreciate the information, and providing examples is helpful."



Upcoming Webinar 7/28/16

Live WC Panel Discussion

Rich Lenkov, Capital Member, Bryce Downey & Lenkov LLC

Joe Morrow, Corporate Safety Manager, Flying Food Group

Susan Quinn, Risk Management Analyst, Guess?, Inc.

Lynnea Koehler, Claims Adjuster, Underwriters Safety and Claims

Brian Johnson, Senior Claim Representative, Frankenmuth Insurance

Conway Nickerson, Corporate Risk Management Claims Coordinator,
Treasury Operations, Health Care Service Corporation

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Recent Webinars

- Reduce Your Legal Expenses NOW!
- WC Horror Stories
- WC Issues Raised By Millennials
- What The Movies Can Teach You About Handling WC Claims

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.

Disclaimer:

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