



BRYCE DOWNEY & LENKOV
LLC

Workers' Compensation Newsletter February 2018

Upcoming Webinar!
2/22/18
**When Is An Employee Not
An "Employee"?**
[Register Here](#)



THE TOP 5 LIST

Top 5 Things Employers Should Do Before An Injury Occurs

By: [Rich Lenkov](#)
Chair, Bryce Downey & Lenkov Workers' Compensation Department

1/ Maintain A Safe Workplace

This is obvious but important. A culture of safety should pervade your workplace. One great way to do this is to incentivize employees who maintain good safety records.

2/ Put Formal Safety Policies And Procedures In Place

Your company handbook should list steps that must take place to prevent accidents. Make sure these policies are well known and enforced.

3/ Promote A Healthy Workplace

Providing regular breaks, good medical benefits, and promoting healthy lifestyles are essential in creating a healthy and balanced workplace leading to less workers' compensation claims.

4/ Hire A Safety Coordinator

It is important to have an employee responsible for safety. Provide that employee with the tools to create a safe work environment.

5/ Know The Law

Be aware of OSHA regulations and updates.



By: [Michael Milstein](#)



The Illinois gubernatorial race is quickly heating up and we can expect to hear the candidates talking a lot about workers' compensation reform as a way to help fix Illinois. As the campaign progresses we will

continue to provide updates regarding any specific proposals and its potential effect on the WC system.

On the Republican side, incumbent Governor, Bruce Rauner, will face a primary challenge from State Representative Jeanne Ives. It is expected that Governor Rauner will become the nominee for the Republicans.

The Democrats have a much larger field including Daniel Biss, Chris Kennedy and J.B. Pritzker. Kennedy and Pritzker are the main two contenders based on name recognition and campaign war chests.

We will keep you posted on the race and what it could mean for WC reform.



SOUND BITE: Cornell Law School Vice Dean and Professor [Jens David Ohlin](#) discusses the ongoing Mueller investigation.

Rich Lenkov: Supporters of Trump are saying he never had the power to fire Mueller. Opponents of the president say that even if he didn't have the power to fire Mueller, if he believed that he did and he took actions to further that belief, then that is a prosecutable case of obstruction of justice. Thoughts?

Professor Ohlin: I think that his attempted firing of Mueller calling Don McGahn, the White House Counsel and directing him to try and dismiss Mueller, I think that that's a very weak obstruction of justice case by itself. I think what it does though is it could be background evidence in support of an obstruction of justice case regarding the firing of Jim Comey. I think that's very much the strong case.

Rich Lenkov: Why would that not in and of itself be enough for obstruction of justice?

Professor Ohlin: First of all, it was a mere attempt, an incoed at most because he didn't actually succeed in firing Mueller, he simply spoke to McCann who basically pushed back and then Trump thought better of it. If Trump has actually overruled McGahn concerns and said 'I understand but I want to go ahead with it' to me sounds a lot like an internal deliberation between confidants. Trump expressed his opinion and then McCann expressed his opinion and Trump didn't move forward with it. So directly I don't think the Mueller firing is a strong obstruction case.



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

Recent Topics:

- 25th Amendment
- "Time's Up"
- Barbie v. Bratz
- Supreme Court decisions

Past Guests:

- Alan Dershowitz
- Gloria Allred
- Jesse Jackson
- F. Lee Bailey
- Sheriff David Clarke

[Gubernatorial candidate Daniel Biss, can the 25th Amendment bump Trump?, "Fire & Fury", "Time's Up" and more](#)

[Cook County Board candidates Lowry & Degnen, a former football pro turned barrister, the Newtown legacy & more in the last LFO of 2017!](#)

[Can Trump obstruct justice?, Bob Fioretti on his run for Cook County Board President, Blago](#)

[Jeffrey Cramer on Mueller indictments, Amanda Vinicky on Rauner's re-election campaign, Jesse Ruiz on running for IL attorney general](#)

[Colin Kaepernick, baseball injury liability, gun control legislation after Vegas](#)

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Early Bird Gets Nothing

By: [Michael Milstein](#)



In *Stewart v. Village of Lincolnwood* (25 ILWCLB 181), the arbitrator awarded benefits to an off-duty police officer that collided her motorcycle with a stationary fork utility vehicle in Respondent's parking lot. On appeal, the Commission reversed the arbitrator's decision for 2 reasons.

First, the Commission found that Petitioner was not in the course of her employment at the time of the alleged accident as she was an hour early before work. The Commission reasoned that arriving an hour before work was unreasonable and that Petitioner failed to prove that Respondent benefited from her early arrival.

Second, Petitioner's accident did not arise out of her employment as there was no causal connection between her injuries and a hazardous condition of the parking lot. Specifically, the Commission found that Petitioner's injuries stemmed from her personal actions and not an employment related-risk as she struck a stationary object and her path was unobstructed. Therefore, the Commission denied benefits.

Practice Tip:

Being on the premises/parking lot does not mean an injury should be accepted.

Employees Are Not Rewarded For Being "Stressed"

By: [Tim Furman](#)



In *Bumphus v. Unique Personnel Consultants*, 25 ILWCLB 189 (Ill. W.C. Comm. 2017), the Commission denied benefits to a petitioner who alleged that he was mentally disabled because he was denied an accommodation at work.

Petitioner reported that he had a rod and two pins due to a prior unrelated injury and requested that he refrain from lifting at work. Although Petitioner corroborated his prior injury with medical records, Respondent denied his request. As a result, Petitioner alleged that he sustained stress and anxiety due to bullying and duplicity but failed to present any evidence of a psychological work-related condition.

On appeal, the Commission affirmed the arbitrator's decision and denied benefits as Petitioner failed to prove that he suffered a sudden, definite event. The Commission reasoned that Petitioner's alleged interactions with his co-workers were normal and that it did not rise above a day-to-day strain and tension.

Practice Tip:

Petitioner must prove *sudden, severe* and *emotional* distress when evaluating mental claims.

Firm News

BDL Leading Lawyers 2018

We are proud to announce [Geoff Bryce](#), [Storrs Downey](#), [Rich Lenkov](#), [Jeanne Hoffmann](#), [Margery Newman](#), [Werner Sabo](#), [James Zahn](#), [Brian Rosenblatt](#), [Terry Kiwala](#), and [James McConkey](#) have been selected as 2018 Leading Lawyers. Leading Lawyers are recommended by their peers to be among the top lawyers in their areas of practice. Less than 5% of all lawyers licensed in each state receive this distinction.



In addition, [Michael Milstein](#) has been selected as Emerging Lawyer for 2018. Emerging Lawyers have been identified by their peers to be among the top lawyers age 40 or younger unless they have practiced for no more than 10 years. Less than 2% of all lawyers licensed in each state receive this distinction.



BDL Super Lawyers 2018

We are proud to announce [Rich Lenkov](#), [Margery Newman](#), [Jeanmarie Calcagno](#), and [Brian Rosenblatt](#) have been selected as 2018 Super Lawyers. The Super Lawyers designation is given to no more than 5% of lawyers in Illinois.



In addition, [Michael Milstein](#), [Kirsten L. Kaiser Kus](#) and [Renée Day](#) were selected to Rising Stars. Rising Stars is an exclusive list, recognizing no more than 2.5% of lawyers in Illinois.



“Forecast For 2018”

On **1/24/18**, Bryce Downey & Lenkov co-hosted “Forecast For 2018” with Willis Towers Watson. [Robert Bramlette](#) moderated the bankers’ roundtable featuring leaders from Busey Bank, CIBC and West Suburban Bank. The seminar also included presentations from [Geoff Bryce](#), [Jeanne Hoffmann](#) and [Margery Newman](#).



Upcoming Seminars

- On **2/2/18**, [Storrs Downey](#) will present “Identifying, Investigating & Reducing Sexual Harassment In The Workplace” at the Illinois Manufacturers' Association's *Small Manufacturers Council Meeting* in Oak Brook, IL. For more information or to register, [click here](#).
- On **2/23/18-2/24/18**, [Jeanne Hoffmann](#) and [Geoff Bryce](#) will attend the 36th Annual CAI Illinois Condo-HOA Conference & Expo at the Donald E. Stephens Convention Center in Rosemont, IL. Be sure to stop by our booth! For more information or to register, [click here](#).
- On **5/23/18**, [Rich Lenkov](#) will participate in “Navigating Mild Traumatic Brain Injury Cases in the Workers Compensation Environment.” at the 2018 CLM & Business Insurance Workers Compensation Conference. For more information or to register, [click here](#).
- On **5/23/18**, [Tricia Bellich](#) will participate in “Premium--It's Not Just About Price!” at the 2018 CLM & Business Insurance Workers Compensation Conference. For more information or to register, [click here](#).

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 1/19/18 webinar,
"The Other Side: 5 IL WC Issues From A Petitioner's Attorney's POV"

"Real conversation, easy to understand, good topics"

"I enjoyed the subject and examples"

"I thought it was beneficial to see things from the PA's perspective"

"Very informative as usual. I was surprised to see a PA was invited to speak, that was good!"



Upcoming Webinar

2/22/18

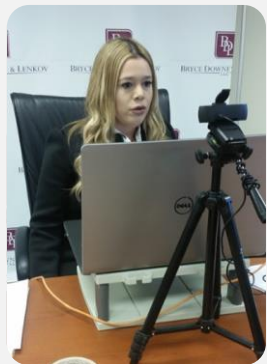
[When Is An Employee Not An "Employee"?](#)

[Rich Lenkov](#)
[Chase Gruszka](#)

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Recent Webinars

- The Ups & Downs Of Upper & Lower Extremity Claims
- Illinois Workers' Compensation Reform
- New OSHA Regulations
- 1st Annual Great American BDL WC Quiz
- Common Workers' Compensation Issues Defined
- Indiana Forms: Taking A Claim From Start To Finish



If you would like a copy of any of our other prior webinars, please email us at mkt@bdlfirm.com

Cutting Edge Legal Education

If you would like us to come to you for a free seminar,
[Click here](#) or email [Rich Lenkov](#).

Our attorneys provide free seminars on a wide range of workers' compensation topics regularly. We speak to a few people or dozens, to companies of all sizes and large national organizations. Among the national conferences that we've presented at are:

- 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
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
7/15/16 - 1/14/17	1,428.74	535.79	1,071.58
1/15/17 - 7/14/17	1,435.17	538.19	1,076.38
7/17/17 - 1/14/18	1,440.60	540.23	1,080.45

Effective Dates	Maximum PPD	Minimum Rate Death & Total Permanent Disability: 50% of the Statewide Average Weekly Wage
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	755.22	
7/1/16 - 6/30/17	775.18	

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.

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.

Minimum TTD & PPD	Single	Married	1 DEP.	2 Dep.	3 Dep.	4+ Dep.
TTD & PPD 7/15/10 - 7/14/17	\$220.00	*	\$253.00	\$286.00	\$319.00	\$330.00

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