



**Bryce
Downey
& Lenkov LLC**

Workers' Compensation Newsletter

February 2019

Dear Rich



How do you prevent employees from filing fraudulent claims?

— Stacy, Chicago, IL

By [Rich Lenkov](#)

Workers' Compensation Practice Chair

I don't know that you can ever completely prevent this. However, you can foster a culture of responsibility and good faith by treating legitimate claimants well. If your employee has a real injury that is related to work, pay them their benefits and do everything you can to get them back to work as soon as possible.

Of course, you should be equally as attentive to the claimants who are less than legitimate. Handle those aggressively, as you do not want to send the message that you will accept fraudulent claims.

And if the claim does truly involve fraud, report that to authorities. In Illinois, there is a mechanism in the Act for fraud to be pursued criminally. [Click here for more information.](#)

Legislative Update

By [Michael Milstein](#)

Income Member



Alderman Ed Burke's indictment has sent shock waves throughout Illinois' political world and its effects have reverberated to the workers' compensation community.

There has been a desire to audit Chicago's \$100 million workers' compensation program for many years. However, Ald. Burke consistently blocked that request as head of the Committee on Finance and controller of the city's workers' compensation program. Ald. Burke's resignation will allow Chicago to "hit the reset button," take control away from City Council and allow an outside company to review the system to determine where it can be improved.

We have not seen any moves by Gov. Pritzker to make changes at IWCC or through legislation, though we don't think we will have to wait long. We will continue to keep you posted.

Please submit your most pressing workers' compensation questions to mkt@bdlfirm.com and Rich will respond in the next newsletter.

Legal Face-Off

Podcast



Legal Face-Off is a fast paced, high energy legal program dealing with the hottest issues of the day. Rich Lenkov and Christina Martini provide a legal point/counterpoint perspective on issues ranging from Hollywood celebrities, athletes, politicians and everything in between.

Sound Bite: Austin Chamber of Commerce director and ACE Municipal CEO Amara Enyia joins Rich and Tina in studio. They discuss her mayoral candidacy and what she would change about Chicago City Council.

Rich Lenkov: The situation that's getting a lot of news is aldermen in hot water: first Ald. Burke, and now Ald. Solis. What is wrong with city council and what would you do as mayor to fix these issues?

Amara Enyia: There is essentially a culture of corruption that is institutionalized in the council, including administrative functions in the hands of aldermen and legislative hands which shouldn't be the case. We saw that with the workers' compensation program and finance committee under Burke, but we also see it with small businesses that want to get additions or upgrades and often feel like they are shaken down for those things to happen.



[Listen to Full Episode Here](#)

Recent Topics

- Aldermen Burke & Solis
- Chicago mayoral candidates
- Challenges facing law schools
- Fyre Fest documentaries
- Van Dyke trial
- #MeToo Movement

Past Guests

- Alan Dershowitz
- Gloria Allred
- Jesse Jackson
- F. Lee Bailey
- Directors Julie Cohen and Betsy West of RBG

[RBG, Jeff Bezos, Cop to Yoga, R. Kelly and much more](#)

[Gery Chico, Golsteyn, new IL laws and much more](#)

[Flynn, ACA, Sandra Bland documentary & more](#)

[Jeffrey Cramer on Trump, inside out, planned parenthood, Fleetwood Mac settlement and much more](#)

[Mayoral candidate Dorothy Brown, Asha Rangappa on Mueller, El Chapo trial, Laquan McDonald trial part II & much more](#)



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Urologist's Testimony Extinguishes Firefighter's ODA Claim

By [Jonathan Zarate](#)

Associate



In *Ekkert v. Ill. Workers' Comp. Comm'n*, (2018 IL App (2d) 170447WC-U), the appellate court upheld the Commission's decision regarding an Occupational Diseases Act (ODA) claim. They found that the employer successfully rebutted the Section 1(d) presumption that Petitioner's cancer arose out of and in the course of his employment and was causally related

to his exposure as a firefighter.

Petitioner was exposed to fire and smoke 10-12 times a year since 1991. When Petitioner was promoted to battalion chief after 18 years, the number of exposures increased. In 2011, Petitioner was diagnosed with prostate cancer and claimed that the various exposures were a cause of his cancer.

The appellate court noted that to overcome the Section 1(d) presumption, an employer must offer sufficient evidence, using expert testimony or Petitioner's medical history, to prove that something other than Petitioner's occupation caused his condition. Where an employer provides evidence of a non-work related cause for Petitioner's condition, the employer successfully rebuts the presumption.

Here, a board-certified urologist opined that there was no link between Petitioner's occupation as a firefighter and his prostate cancer. The urologist further testified that genetics played the greatest role in Petitioner developing cancer.

Practice Tip:

For ODA claims involving firefighters and EMTs/paramedics, it is crucial for employers to obtain an expert opinion to challenge the Section 1(d) presumption.

Compensability Lurks Beneath the Snow

By [Emily Schlecte](#)

Associate



In *Crowder v. The City of Springfield*, (Ill. App. Ct. 4th Dist 2018), the appellate court held that Petitioner's slip and fall on ice while using a walkway available to the public was compensable.

Petitioner worked for the City of Springfield as an administrative secretary. The building where she worked had two entrances: one

on the west side which was used by the general public, and one on the east side which required an employee badge for entry.

Petitioner exited the building through the west entrance to walk to a nearby coffee shop during her break. Video surveillance showed a light dusting of snow covering the walkway. Petitioner slipped and injured her ankle.

The arbitrator denied benefits and found that Petitioner was injured as result of a personal risk and was not at a greater risk of injury than the general public. The Commission and circuit court affirmed the decision.

The appellate court held that a risk analysis was unnecessary since the injury occurred on the employer's property and was the result of an unsafe or hazardous condition. The court also discussed that where the injury was due to the dangerous condition of the employer's premises, courts have consistently found the accident to be compensable. Therefore, the fact that the employer's walkway was also used by the general public was immaterial to the issue of compensability.

Practice Tip:

Don't stop the analysis at whether or not the area was open to the general public. Dig deeper and ask whether a hazardous condition existed.

View more information on our [Workers' Compensation practice](#).

Our other practices Include:

- [Appellate Law](#)
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- [Entertainment Law](#)
- [General Liability](#)
- [Healthcare Law](#)
- [Insurance Law](#)
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- [Labor & Employment](#)
- [Products Liability](#)
- [Professional Liability](#)
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- [Transportation Law](#)

Firm News

Monday “Off” Main Street

We were proud to co-sponsor Monday “Off” Main Street, the 9th annual exclusive filmmaker social held every year during the Sundance Film Festival. This year’s social was held at the Wine Dive in Park City.

Accomplished industry professionals networked and mingled during the event. [Rich Lenkov](#) co-hosted.

[Learn more about Monday “Off” Main Street.](#)



Jessica Jackler Authors Article for IDQ

Chicago associate [Jessica Jackler](#) recently wrote an article for the Winter 2019 issue of DRI’s *In-House Defense Quarterly*. Her article, “Reducing the Risk of Workplace Violence,” discusses steps employers can take to prevent violent and non-violent acts of aggression within their businesses.

Jessica shared her thoughts following the horrific events at Marjory Stoneman Douglas High School in 2018, her alma mater. At a time when violent tragedies have become the new norm, Jessica provides tips she hopes will help keep workplaces protected from internal and external threats.



[Read “Reducing the Risk of Workplace Violence.”](#)

Hope For The Day’s Sip of Hope Coffee Bar

Client Hope For The Day, was recently featured in a *Chicago Sun Times* article celebrating the launch of their coffee shop, ‘Sip of Hope’ and the impact it’s making throughout the community.

Sip of Hope Coffee Bar aims to break the silence around mental health, with a hundred percent of the proceeds going toward suicide prevention and mental health education.

Its nonprofit parent, Hope for the Day works on proactive suicide prevention by providing outreach and mental health education. President Obama also praised the coffee shop, referencing Sip of Hope in a tweet last month.

[Learn more about Sip of Hope.](#)

Upcoming Events

- **2/10/19** – Brian Rosenblatt will attend the 61st GRAMMY Awards. Brian has been a member of the National Academy of Recording Arts & Sciences for 22 years.
- **2/13/19** – [Samuel Levine](#) will present “Commercial Real Estate Construction Contracts and Mechanic Lien Litigation” at Kane County Bar Association’s annual Commercial Real Estate Seminar in Geneva, IL. [Register now.](#)
- **2/24/19** – BDL participate in [Respiratory Health Association’s Hustle Up Chicago](#) to raise money for lung disease research, advocacy and education.
- **2/26/19** – [Samuel Levine](#) will present “Allowances and Contingencies: How to Avoid Disputes” for Lorman Education Services. This presentation offers continuing education credit. [Register now.](#)

BDL Webinars & Seminars

Upcoming Free Webinars

Top Reasons Why Plaintiffs Retain Counsel

February 20, 2019

Kirsten Kaiser Kus and James Yankosky



REGISTER NOW!

Cutting Edge Continuing Legal Education

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

Our attorneys regularly provide free seminars on a wide range of workers' compensation topics. We speak to companies of all sizes and national organizations. Among the national conferences at which we've presented:

- Chicagoland Safety, Health and Environmental Conference
- CLM Retail, Restaurant & Hospitality Committee Mini-conference
- National Workers' Compensation and Disability Conference® & Expo
- RIMS Annual Conference
- SEAK Annual National Workers' Compensation and Occupational Medicine Conference
- Workers' Compensation Educational Conference Claims and Litigation Management Alliance Annual Conference



Watch a clip from our latest webinar.



Recent Webinars

- Top 10 Red Flags
- 2018 Review
- WC Issues Raised by Millennials
- WC Horror Stories
- Defending Shoulder and Knee Injuries, feat. Chicago Bulls & White Sox Doctor Brian Cole
- Key Differences in IL & IN Workers' Compensation
- Injuries Away from Work
- Settlement Strategies
- When Is An Employee Not An "Employee"?
- Top 10 Differences Between IL WC & GL Claims

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

Illinois Rates At A Glance



**Bryce
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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
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
7/1/17-6/30/18	790.64

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 - 7/14/17	\$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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