



Workers' Compensation Newsletter

July 2022

Illinois Legislative Update

By [Michael Milstein](#)

Capital Member



On 4/7/22, both houses of the Illinois legislature passed (almost unanimously) HB 1208 impacting the qualification of Commissioners, the location of arbitrators and the dissolution of the Self-Insurers Administration Fund. Governor Pritzker has yet to sign the bill.

In the 2011 amendments to the ILWCA, any new arbitrator appointed after those amendments must be licensed to practice law in Illinois. However, that wasn't a requirement for Commissioners, until now. Per HB 1208, any Commissioner appointed after the bill is signed into law "must be authorized to practice law" in Illinois and maintain their license throughout their term.

HB 1208 also amends the current rules regarding how long an arbitrator can sit in a specific venue. Previously, an arbitrator could only be in a venue (excluding Cook County) for 2 years in each 3 year term. Under this new law, an arbitrator can remain in the same venue for 4 consecutive years (excluding Cook county).

Lastly, HB1208 dissolves the Self-Insurers Administration Fund and for the transfer of the money in that fund to the Self-Insurers Security Fund.

We will let you know once the Governor takes action on this bill.

Indiana Legislative Update

By [Jennifer Meyer](#)

Income Member



A new law affecting the Indiana Worker's Compensation Act was signed into law on 3/18/22, when Indiana House Bill 1153 became Public Law 160.

The law removed outdated language and amends Section IC 22-3-3-3 as follows:

STATUTE OF LIMITATIONS

As of 7/1/22, a claim for compensation shall be filed within 2 years after the occurrence of an accident or compensation is paid. The two-year limitation period to file an Application for Adjustment of Claim begins to run on the last date for which the compensation was paid.

PECUNIARY LIABILITY AND AMBULATORY OUTPATIENT SURGICAL CENTERS

It also amends the definition of pecuniary liability and effective 1/1/23, adds Ambulatory Outpatient Surgical Center (ASC) to the definition of "medical service facility" under the Act. Thus, ASCs will be reimbursed at 200% of the Medicare rates on the same date for the same service or product like hospitals are instead of their current reimbursement rates which are similar to physicians and in accordance with the 80th percentile standards. However, the Act still allows medical service facilities to negotiate with employers, insurance carriers, and bill review services for an alternate payment arrangement.

ADDITIONAL AND INCREASED BENEFITS

Impairment and disability benefits increase by 3% each year for 4 years and the next benefit increase is set to occur on 7/1/23 with respect to injuries occurring on or after 7/1/23.

CLEAN CLAIM PAYMENT REQUIREMENTS

Effective 1/1/23, the law establishes clean claim payment requirements related to workers' compensation claims. It defines a "clean claim" as one that is submitted by a medical service provider for payment that has no defect, impropriety, or particular circumstance requiring special treatment preventing payment. A "payor" who is defined as an employer or an employer's insurance carrier shall pay or deny each clean claim within 30 days if filed electronically or 45 days if paper filed.

A payor shall notify the medical service provider of any deficiencies in a submitted claim not more than: 30 days after the date the claim is received for electronically filed OR 45 days after claim received if paper filed. Failure to notify provider of deficiencies establishes that it is a clean claim. If the payor fails to pay or deny a clean claim timely, the payor owes interest to the medical provider. And the Act specifies how interest accrues.

The Act specifies what constitutes forms for payment: CMS 1450 (UB-04), CMS 1500 (HCFA-1500), American Dental Association (ADA) claim form. This is good since often in litigated claims, Plaintiffs will submit statements and ask insurance companies or employers to pay them when we need copies of the bills to process.

If you have any questions about this law, please [contact us](#).

Injured While Commuting to Different Office Location Not Compensable

By [Kristin Lechowicz](#)

Associate



In *Boyden v. Mechanical Inc.* 21 IWCC 0570, the Commission held that Petitioner was not a traveling employee when he sustained injuries in a motor vehicle accident on his way to a job site.

Petitioner would perform work as a journeyman in various locations operated but not owned by Respondent. He never

traveled to multiple locations in a single workday. Respondent neither provided Petitioner's vehicle nor reimbursed him for any travel time or expenses during his daily commute. Petitioner's workday began when he arrived at the job site and reported to a foreman. He was not eligible for "portal-to-portal" pay under his labor agreement, which would reimburse him for travel expenses, as this was reserved for on-call service people who were called into work outside of work hours.

Petitioner had been working at and commuting exclusively to Berner Foods since 4/26/18.

On 5/8/18, he was involved in a motor vehicle accident on his way to work. The Commission found "[Petitioner] suffered his significant injuries while engaging in his normal commute to work." It reasoned:

1. He did not travel to multiple locations in a single workday;
2. He was not compensated for travel time or expenses;
3. Respondent did not control any aspect of his daily commute;
4. He did not transport any tools or equipment owned by Respondent;
5. Travel was not an essential part of Petitioner's job;
6. He traveled only during his daily commute, and as such was not exposed to the hazards of the road and vehicles any more than the general public.

The Commission additionally acknowledged that Respondent did not own Berner Foods, but for practical purposes Berner Foods qualified as Respondent's premises. The Commission held that Petitioner failed to prove that he sustained an accidental injury arising out of his employment and reversed the arbitrator's decision.

Practice Tip:

Do not assume that a petitioner is a traveling employee just because they are required to travel away from respondent's job site.

A Slippery Slope: Further Analysis of Parking Lot Accidents

By [Timothy Furman, Jr.](#)

Income Member



In *Sturgis v. Midwest Physician Administration Services LLC*, 30 ILWCLB 45 (Ill. W.C. Comm. 2022), the Illinois Workers' Compensation Commission denied benefits to a petitioner who slipped on ice immediately after work.

After leaving work for the day, Petitioner slipped on ice while walking to her car. In denying benefits, the arbitrator relied on the Illinois Appellate Court's decision in *Dukich v. IWCC*, which analyzed whether a given condition was hazardous and whether Petitioner was exposed to a condition more hazardous than the general public.

The Commission affirmed the arbitrator's decision but did so under different legal reasoning. The Commission held that when analyzing whether parking lot cases are compensable, Arbitrators should weigh the three factors previously laid out by the Illinois Appellate Court in *Walker Brothers v. IWCC*:

1. Whether the parking lot was owned by the employer;
2. Whether the employer exercised control or dominion over the parking lot; and
3. Whether the parking lot was a route required by the employer.

The Commission determined that Petitioner's accident was not compensable, applying a *Walker Brothers* analysis. They held that Respondent did not own or exercise any control over the parking lot in question, did not require its employees to use any specific route and did not direct its employees where to park.

Practice Tip:

The facts of parking lot cases are crucial to pin down. The Commission appears to be focusing more on Respondent's control and less on whether the condition was "hazardous."

Firm News

Kirsten Kaiser Kus Named Influential Women of Northwest Indiana Award Finalist

We are excited to announce that Capital Member [Kirsten Kaiser Kus](#) is a finalist for the 2022 Influential Women of Northwest Indiana Awards. Kirsten was nominated in the Law Influential Woman category for her commitment to empowering and supporting women within her industry and demonstrating exemplary leadership in the community.

Winners will be announced at the Influential Women Awards Banquet on 9/29/22.

Congratulations to Kirsten on her nomination!

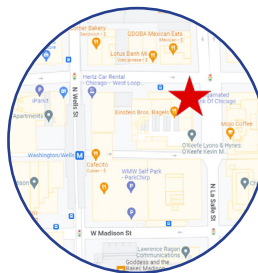


Firm Name Change & New Chicago Office Location

We are pleased to announce that our firm name has changed from Bryce Downey & Lenkov LLC to Downey & Lenkov LLC, effective 4/4/22.

In addition, our Chicago office has moved to our new location, 30 North LaSalle, Suite 3600, Chicago, IL 60602, effective 6/1/22.

We remain fully committed to exceeding expectations in the years to come. Thank you for your continued support.



**30 N LaSalle Street
Suite 3600
Chicago, Illinois 60602**



Ryan Danahey Named Divorce Volunteer Attorney of the Year

Downey & Lenkov is pleased to announce that Income Member [Ryan Danahey](#) was named Divorce Volunteer Attorney of the Year by Legal Aid Chicago and honored at their 2022 Annual Luncheon on 6/14/22.

Ryan was recognized for his work on the Simple Divorce pro bono project as well as his dedication, support, and service to Legal Aid Chicago as a volunteer.



Kirsten Kaiser Kus & Timothy Furman to Present at Workers' Compensation Defense Institute Webinar

Capital Member [Kirsten Kaiser Kus](#) and Income Member Timothy Furman provided Indiana and Illinois perspectives during the [Workers' Compensation Defense Institute](#) webinar, "Cracking the Case in Your State" on 6/3/22.

This interactive session covered the latest trends and insights in workers' compensation claims handling across 14 different states.



BDL Is Growing

Please join us in welcoming [Dana Djokic](#) and [Ryan Dezonno](#) to the firm as associates.



Dana joins us with 20 years of litigation experience having worked as in-house counsel for a major insurance company, resolving hundreds of complex workers' compensation claims. Outside of work, she enjoys taking nature walks with her dog, Daisy.



Ryan focuses his practice in worker's compensation and general liability. He is an experienced litigator who collaborates with his clients to develop successful legal strategies. In his spare time, Ryan enjoys physical fitness and attending local comedy shows.

Upcoming Events

- **8/24/22** – [Rich Lenkov](#), [Kirsten Kaiser Kus](#) and [Tim Furman](#) will present "Multi-State Workers' Compensation Laws," at the 2022 Workers' Compensation Institute Conference in Orlando, FL. For more information and to register, [click here](#).

Legal Face-Off

Legal Face-Off is a fast paced, high energy legal podcast dealing with the hottest issues of the day. Rich Lenkov and Christina Martini provide a point/counterpoint perspective on a variety of breaking legal news topics.



“This decision will absolutely not outlaw abortions. Abortions will no longer be legal in some states, which means some folks

may need to travel across state lines. We can expect that the folks who will be most impacted by this law are those who are least able to engage in those sorts of travel practices. So those who are poor, youth, especially queer youth of color. [Queer youths] are also disproportionately likely to be poor, so having this in place is just going to kind of create structural barriers for accessing safe and legal abortion. It will not outlaw abortion in any context.”

– Carla Pfeffer on the impact of overturning Roe v. Wade
Michigan State University
Associate Professor

[Listen to the full episode here](#)

Want to be a guest on a future episode? [Contact us.](#)

Recent Topics

- Roe v. Wade
- Jan. 6 hearings
- Texas abortion ban
- LGBTQ rights
- Will Smith/Chris Rock slap
- Johnny Depp v. Amber Heard

Recent Guests

- Dan Novack
- Gloria Allred
- IL Rep. Kam Buckner
- Ald. Brendan Reilly
- Elie Honig
- Scott Reitz
- Justin Kaufmann

[Khardori on January 6th Hearings, Andrew on Dentons Innovation and Growth, Lindblom and Rath on Top Gun Lawsuit, and much more](#)

[Depp, Uvalde, Kanye, and much more](#)

[Kreis and Donley on LGBTQ, Civil Rights and the SCOTUS Leak, Reilly on Chicago Casino Plan, and much more](#)

[Allred on Roe, Polsky on DeSantis v Disney, Hall on drunk driving, & Leonard on breaking the internet with divorce TikTok](#)

[Casciato on Amazon warehouse collapse, Carroll on COVID court delays, Orosz on Dua Lipa lawsuits, Markus on 'A Gift for the Future,' and much more](#)



Legal Face-Off's Legal Grab Bag

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Please Like Us on **Facebook**, **Twitter** and **Subscribe on Apple Podcasts**. Send us your questions and we will answer them on air — **nothing is off-limits**.