

Illinois Legislative Update

By [Michael Milstein](#)

Capital Member



There has been little movement on any proposed amendments to the Illinois Workers' Compensation Act before the Illinois Legislature. However, Governor Pritzker did recently reappoint numerous arbitrators with 2 new appointments. The following arbitrators have been reappointed: Linda Cantrell, Raychel Wesley, Bradley Gillespie, Jeanne AuBuchon, Gerald Napleton, Charles Watts, Rachael Sinnen,

and Paul Seal.

The IWCC also received notice that 2 arbitrators would retire: David Kane and Steven Fruth. These retirements opened the door for 2 new appointments. Governor Pritzker appointed James Byrnes and Jennifer Bae to fill those vacancies. Mr. Byrnes was a long time Respondent's attorney while Ms. Bae served as a member of the Cook County Sheriff's Board and as the Director of Employee Discipline.

We will continue to update you on any new legislative proposals or judicial appointments impacting the IWCC.



Indiana Legislative Update

By [Jen Meyer](#)

Income Member



EFFECTIVE SEPTEMBER 1, 2023, NEW PPI SUBMISSION PORTAL FOR INDIANA ADJUSTERS

On 9/1/23, the Worker's Compensation Board of Indiana is rolling out a new PPI Submission Portal available only to adjusters for now.

The Portal will allow adjusters to submit all documentation electronically, including the State Form 1043 (Agreement to Compensation), Physician's Report, State Form 2188, Employee Waiver of Examination by Personal Physician, State Form 53913. The Portal will also allow adjusters to monitor the status of each submission, once accepted, through review and approval.

The Board has posted a Help/Reference document for adjuster use. Please click [here](#) to view.

On 10/1/23, the PPI Submission Portal will be Board-mandated for adjuster-only use to submit PPIs.

It has been requested that attorneys representing adjusters/insureds be able to eventually access the PPI Submission Portal and the Board is taking the request under advisement. For now, we will request that our clients send us all pertinent information from the PPI Submission Portal since we will be unable to access it.

While we may not be able to access the PPI Submission Portal, we are always available to answer any questions you have about your claims, preparation, filing, or timelines regarding these forms.

Who is an Employee?

By [Marcy Bennett](#)

Income Member



In a recent Illinois Appellate Court decision, the Fourth Circuit tackled a vital question for our Workers' Compensation system: Who is an employee?

In an unpublished decision, the appellate court reviewed a case where a Petitioner, a pilot, was injured while operating an aircraft owned by Respondent, QCS. Petitioner operated aircrafts for the employer to obtain additional flight hours for her next level of accreditation. During one such flight, Petitioner suffered injuries during an attempted landing.

Petitioner argued that she was an employee of QCS, and as such was entitled to benefits under the Illinois Workers' Compensation Act. Respondent, QCS, argued that Petitioner was not an employee because she was a volunteer who did not receive financial compensation.

It was undisputed at the time of trial that QCS did not compensate Petitioner for her time. Rather, she flew aircrafts to acquire flight hours for her commercial airline pilot license. QCS provided the flight paths, directions, and schedules for the flights. However, Petitioner incurred no flight rental costs or fuel costs associated with operating the aircraft.

A QCS representative testified that Petitioner was neither guaranteed flight hours nor was she promised payment for any time worked. Petitioner did not receive QCS pay stubs or tax documentation.

The Arbitrator awarded benefits, finding an employment relationship existed based on the implied promise of employment. The Commission, on appeal, determined that Petitioner did not prove employee/employer relationship. The Commission found that no employer/employee relationship can exist absent a contract for hire, whether it be implied or express. The Circuit Court found that the employment relationship existed and awarded benefits.

The Appellate Court held that the Commission was reasonable and that a volunteering position with no payment or expectation for future employment would not constitute an employment relationship. For Petitioner to be considered an employee, there must be an employment contract whether "express or implied, oral or written." In this case, there was no meeting of the minds and no employment relationship entered by the parties.

The Appellate Court affirmed and reinstated the decision of the Commission which found no employment relationship. Petitioner's request for benefits was denied.

Practice Tip:

An employment contract must exist for an employment relationship to be established under the Act. Such a contract can be implied and verbal and does not require physical paperwork. Further, the promise of future employment to an otherwise unpaid volunteer could give rise to an employment relationship.

Recent Appellate Court Clarification on Calculating the Limitations Period for Filing Applications

By [Suzanne Kleinedler](#)

Associate

In its July 23, 2023 opinion in Santos v. Franciscan Health, 2003



Ind. App. LEXIS 214, the Indiana Court of Appeals held that Trial Rules 5 and 6(A) apply to extend the time to file an Application for Adjustment of Claim with the Indiana Worker's Compensation Board (the Board) to "the next day the office is open," in cases where the last day of a limitations period under the Indiana Workers Compensation Act (the Act) falls on a Saturday, Sunday or holiday.

In Santos, the Court clarified the interplay between the Act and the Indiana Trial Rules concerning procedural rules prescribed within the Act. They ultimately reversed the Board's dismissal of the plaintiff's Application that was filed on Monday, December 6, 2021, the day after the Application deadline prescribed by the Act ran on Sunday, December 5, 2021.

DISCUSSION

Outside of the Trial Rules governing discovery, the INWCB has never expressly adopted the state's remaining Rules of Trial Procedure. With regard to the remainder of the Trial Rules, Indiana courts have long held that, where the statutes that comprise the Act prescribe special rules of procedure for administration proceedings, those procedures will prevail when they conflict with the Trial Rules. However, in cases where the Act does not conflict with the Trial Rules but remains silent as to a particular procedure, we should look to the Trial Rules to supply the missing information. The Santos Court relied on that body of case law in reversing the Board's dismissal of the Santos Application.

Practice Tip:

Although, strictly speaking, the Santos holding appears favorable to petitioners, it is not particularly harsh to defendants. Practically, the Santos Court provided clarification that will serve to avoid unnecessary motion practice in limited circumstances, as were present in this claim. Assuming no Petition for Rehearing is filed, or Transfer to the Supreme Court is sought in Santos, we should be cognizant in analyzing whether we can apply its holding in future instances where the Act and the Trials Rules cannot be reconciled.

It is important to understand where the Act prevails to limit or extend the rights of the Parties.

Firm News

Downey & Lenkov Hosted Education Seminar at the Omaha Zoo & Aquarium

Downey and Lenkov co-hosted an educational seminar on September 12, 2023, at Omaha's Henry Doorly Zoo & Aquarium.

The seminar included discussions of Illinois, Indiana, Iowa, Kansas, Kentucky, Missouri and Nebraska. The topics covered were catastrophic claims, pain management referrals, unfair claims settlement practices, subrogation, and third-party suits to name a few. Attendees received 3 CE credits for the states of KY and TX for attending the seminar.



Kirsten Kaiser Kus AS CLM Claims College Faculty

Kirsten Kaiser Kus served as faculty for the CLM Claims College School of Workers Compensation on August 16-19 in Baltimore.



Downey & Lenkov Makes Their Appearance At WCDI Annual Conference

Kirsten Kaiser Kus, Timothy Furman, and Jennifer Meyer presented the multi-state workers' compensation law breakout sessions at the 2023 WCDI Annual Conference. Downey & Lenkov also co-sponsored a Happy Hour at High Velocity during the conference.



Kirsten Kaiser Kus Selected As Lawyer Of The Year



We are pleased to announce that Kirsten Kaiser Kus is again a recipient of the Best Lawyers® award. In addition to receiving the Best Lawyers® designation, she was also named their 2024 "Lawyer of the Year". She has received this accolade for her work in Workers' Compensation Law – Employers. Only a single lawyer in each practice area and community is honored with this prestigious award.

Kirsten Kaiser Kus On The Deconstructing Comp Podcast

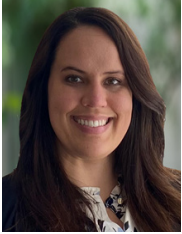


Kirsten L. Kaiser Kus catches up with Yvonne Guibert and Rafael Gonzales on the Deconstructing Comp Podcast during the 2023 WCDI Annual Conference. She provides insight into the ins and outs of the conference and shares her philosophy on case handling.

To listen to the full podcast episode click [here](#).

Natalie Christian Returns to Downey & Lenkov

Natalie concentrates her practice in insurance and workers' compensation defense. As an experienced claims examiner, Natalie brings a unique perspective to the firm, previously working for two international insurance companies.



Downey & Lenkov Welcomes Associate Evan Sloan

Evan concentrates his practice in general liability matters. He comes from a long line of plaintiff's attorneys and began his career representing injured clients throughout the Chicagoland area. Evan previously second chaired multiple jury trials, including a DuPage County case which ended with an excess verdict allowing his client to collect \$800,000.00 on a \$100,000.00 insurance policy.



Michael Milstein To Present At ClaimsXchange Annual Conference

Capital Member Michael C. Milstein will co-present "The Hidden Side of Claims and the Scary Pitfalls to Avoid" at the 2023 ClaimsXchange Annual Conference on 10/12 in Philadelphia. For conference details click [here](#).



claimsXchange

DL Webinars

Key Differences Between Illinois & Indiana Workers' Compensation

9/29/23

Timothy Furman and Jennifer Meyer



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- Arising Out of the Ashes of McAllister: Accident Analysis Reborn
- Workers' Compensation Lessons Learned From Holiday Movies
- Always Be Closing: Top Indiana Workers' Compensation Tips
- What Horror Movies Teach Us About Workers' Compensation

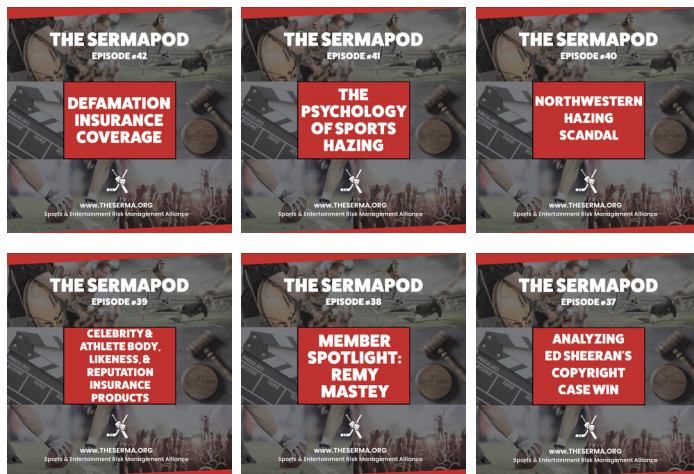
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What's SERMA?

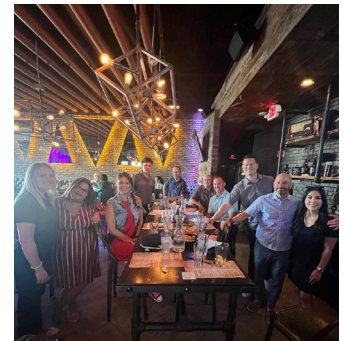


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The SERMAPod



SERMA Happy Hours



SERMA & Chicago RIMS Music Festival Risk Management Panel



SERMA Webinars



Upcoming Events

- **10/12/23** - Happy Hour in Columbus, OH
- **11/1/23** - SERMA at NAYS Youth Sports Congress
- **12/12/23** - Holiday Party in Miami, Florida
- **1/22/24** - Sundance Monday on Main St. in Park City, UT
- **3/7/24** - SERMANar in Colorado Springs, CO

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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.



“In the way that we respond to criminal behavior, I think the things that are most important is to recognize that the police

alone cannot solve all the crime problems in the city, including gun violence. That said, there’s clearly a need for improving the extent to which violent crimes that do occur get solved.”

– David Olson on crime in Chicago

Department of Criminal Justice and Criminology and Co-Director, Center for Criminal Justice

[Listen to the full episode here](#)

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

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- Gun laws
- Alex Murdaugh trial
- Anti-trans legislation
- Dominion v. Fox case
- Abortion
- Trump Indictment

Recent Guests

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- Larry Disparti
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- IL Rep. Kam Buckner
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- Christopher Melcher
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[Ross on Dominion/Fox Settlement, Finley on the Teixeira breach, Melcher on Paltrow and Baldwin lawsuits, and much more](#)

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Legal Face-Off's Legal Grab Bag

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