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## OUTLINE OF ILLINOIS WORKERS' COMPENSATION LAW

**Jurisdiction:** established by proving one of three things:

- 1) Location of injury was in Illinois
- 2) Contract of hire in Illinois – look to the last act necessary
- 3) Employment was principally located in Illinois

**Statute of Limitations:** 3 years from date of accident or 2 years from last payment of benefits, whichever is longer. Payment of group medical or disability benefits may toll the limitations period.

**Section 5(a):** Exclusive remedy: workers' compensation is the only remedy for an employee to recover from his employer for work related injuries.

**Notice:** 45 days from date of accident, must be given to a supervisor, liberally construed in favor of employee. Payment of group medical or disability benefits may toll notice period.

**Medical expenses:** Employees have the right to choose medical providers; the employer cannot direct care. Employer must pay medical expenses that are reasonable and necessary to cure or relieve the effects of the injury. The employee has two choices; if employer referred, not considered a choice. Initial emergency room visit does not count as a choice. Medical bills are subject to the fee schedule.

Employers cannot communicate with the treating physician without written authorization; any results of unauthorized communication may not be admissible as evidence of the matter.

**Average Weekly Wage:** Must look to the 52 weeks prior to the accident, overtime is generally not included; concurrent employment only included if Employer has knowledge of the same.

**TTD:** Temporary Total Disability: paid until Employee's condition has stabilized (MMI) or light duty can be accommodated. There is no cap to the number of weeks an Employee can receive TTD. The TTD rate

is 66 2/3rd% of the average weekly wage, subject to a maximum and minimum rate but minimum cannot exceed the average weekly wage. Termination for cause is not necessarily a basis to terminate TTD.

**PPD:** Permanent Partial Disability: paid after Employee's condition has stabilized to compensate for the permanent disability the injury caused. The PPD rate is 60% of the average weekly wage, subject to a maximum and minimum rate but minimum cannot exceed the average weekly wage. Paid based on the schedule of injuries found in Section 8(d)2 and 8(e). AMA Guides: For injuries occurring after 9/1/2011, Illinois uses the most current edition of the guides. The rating if introduced at trial, shall be a factor considered by the Arbitrator, but not the sole factor.

**Wage Differentials:** Paid when an individual has a reduced earning capacity due to the effects of the injury. Injuries prior to 9/1/2011 will receive wage differential benefits for the Employee's life. Injuries occurring after 9/1/2011 will receive wage differential benefits for 5 years or until age 67, whichever is greater.

**Permanent Total Disability:** Can be established in 2 ways: By a medical opinion, stating the employee cannot return to gainful employment, or based on an odd-lot theory: when there is no stable labor market available for the employee taking into account the employee's physical capability and skill set. PTD cases have special minimum rate rules.

**Prior awards:** an employer can take credit for any prior award to that same body part, regardless of employer, so long as the prior award was under Section 8(e).

**Utilization Review:** used to address necessity of treatment and reasonableness of charges, not causal connection, can be done retrospectively or prospectively.

**Lump Sum Settlement contracts:** unless stated otherwise in the settlement contract, customarily future medical rights (8(a)) and the right to additional compensation (19(h)) should the condition worsen are closed upon approval by an Arbitrator.

When a case proceeds to hearing, Section 8(a) and 19(h) are left open, meaning the employer can be liable for additional, related medical treatment and additional compensation if employee can prove a material change in his condition occurred within 30 months of hearing (8(e) and 8(d)(2)), and 60 months (for 8(d)(1)).

**Independent Medical Examination (Section 12):** The employer has the right to have the employee examined by a physician of its choosing and has a right to rely on that opinion. The exam can address causation, medical treatment, return to work and MMI.

**Discovery:** there is no formal discovery, meaning we do not take the discovery deposition of the employee or the physicians prior to hearing. Subpoenas can be issued for records from parties and non-parties.

**Penalties:** awarded only when the employer's conduct is unreasonable and vexatious and will not be awarded when there is a reasonable factual or legal basis for the defense.

**Causation:** employee must prove the injury was a cause of his current condition, does not need to prove it was the cause.

**Pre-existing conditions:** a pre-existing condition is not a bar to recovery so long as the employee can prove that the underlying condition was aggravated, accelerated or otherwise exacerbated by the injury. There is no apportionment for pre-existing conditions.

**Positional risk:** does not exist in Illinois, just being at the workplace is not enough, must prove the employment was a causative factor.

**Increased risk:** employee must prove he was at a risk greater than that of the general public due to the employment to be compensated for an injury.

**Traveling employees:** must only prove the action was reasonable and foreseeable to recover – employee need not prove an increased risk.

**Amputations:** Statutory loss must be paid as soon as employee can ascertain existence of statutory loss, with penalties imposed for delayed payment. Amputation cases have special minimum permanency rate rules.