Workers’ Compensation Newsletter
June 2020

Illinois Legislative Update

Governor Pritzker Signs COVID-19 Workers’ Compensation Law

By Rich Lenkov
Workers’ Compensation Practice Chair

As we expected, Gov. Pritzker has signed HB2455, making it significantly easier for employees claiming COVID-19 to receive workers’ compensation benefits.

Effective immediately, the new law provides a rebuttable presumption that COVID-19 was contracted out of and in the course of employment for first responders and front-line workers. The law applies to employees who contracted the virus between 3/9/20 and 12/31/20.

The preponderance of evidence standard applies. An employer can rebut the presumption with “some” evidence including, but not limited to:

1. The employee was working from home for 14 days before testing positive
2. The employer is following federal and state guidelines through practices like PPEs and social distancing
3. The employee was exposed by an alternative source

We are defending almost a hundred COVID-19 cases. For more information on aggressively handling these new claims, contact me or any member of our workers’ compensation team.

Takeaways:
1. The presumption is rebuttable. If you are ensuring a safe workplace, you should fight COVID-19 claims
2. Nothing in this bill changes the fact that most COVID-19 cases result in no significant permanent partial disability

Capital member Rich Lenkov, Mark Walls of Safety National and David Menchetti of Cullen, Haskins, Nicholson & Menchetti, P.C. addressed the law in Claimsxchange’s Industry Insights webinar.

Watch “Understanding The New Illinois Workers’ Compensation Law.”
Non-Compliance with Vocational Rehabilitation Justifies Benefits Termination

By Emily Schlecte
Associate

In Mosley v. Illinois, State of/ Shapiro Development Center (28 ILWCLB 52) Petitioner worked as a mental health technician and injured her neck and back while transferring a disabled individual to a wheelchair on 10/1/08. Petitioner underwent extensive medical treatment, including surgery. In July 2011, Petitioner began vocational rehabilitation.

Petitioner participated in vocational rehabilitation for almost five years. During the program, Petitioner obtained her GED and enrolled in a computer skills course. However, Petitioner failed to sit for the final examination and failed the computer course. On 1/27/15, Respondent terminated maintenance benefits and vocational rehabilitation due to Petitioner’s noncompliance.

The arbitrator awarded maintenance benefits from 1/27/15 – 2/15/16, finding that Petitioner fully participated in a job search throughout the five years of vocational rehabilitation. The arbitrator also noted that Petitioner endured some personal obstacles that hindered her ability to look for work and document her efforts.

The Commission vacated the award for maintenance and found that Petitioner was noncompliant with the counselor’s recommendations throughout the program, failed to participate in a valid job search once vocational rehabilitation was terminated and failed to complete the recommended computer class.

Practice Tip:
Diligently review all vocational rehabilitation reports for signs of noncompliance in order to terminate workers’ compensation benefits.

Dribbling, Shooting, Traveling: Reasonable & Foreseeable

By Timothy Alberts
Associate

In Washington v. Northeastern Illinois University, the Commission reversed the arbitrator’s denial of benefits for injuries sustained during voluntary recreation.

Petitioner, a recruiter for Respondent’s athletics department, volunteered to play basketball with potential recruits while visiting a high school. During the pickup basketball game, Petitioner fractured her leg, securing a blood clot which ultimately caused her death.

The arbitrator denied benefits, finding Petitioner’s activities voluntary pursuant to Section 11 of the Act and therefore not in the course of and arising out of employment.

The Commission reversed the arbitrator’s decision, holding that for traveling employees, Section 11 is trumped by the “reasonable and foreseeable” analysis. The Commission highlighted two witnesses who testified that Petitioner’s actions were both reasonable and foreseeable considering Petitioner’s job as a recruiter. The Commission awarded benefits, finding that Petitioner met the burden on accident for a traveling employee.

Practice Tip:
Traveling employees’ voluntary activities can be compensable if Petitioner can establish that they were both reasonable and foreseeable. Reasonableness and foreseeability of voluntary activities can best be refuted by interviewing fact witnesses to gain a solid understanding of Petitioner’s job duties and the expectations that come with it.
COVID-19 Webinars & Seminars

Rich Lenkov & Dr. Brian Cole on Occupational Injuries & Telemedicine Post COVID-19


Rich Lenkov Presents at Chicagoland Associated General Contractors Webinar

Capital member Rich Lenkov presented at Chicagoland Associated General Contractors’ webinar on 4/28/20. This webinar covered construction industry issues involving workers’ compensation, including the latest changes to the Illinois Workers’ Compensation Rules and how they affect contractors, how to proceed when an employee claims COVID infection through work and more.

Watch “COVID-19’s Impact on Workers’ Compensation Claims.”

Michael Milstein and Rich Lenkov Present at WorkCompCentral’s Webinars


Watch “COVID-19’s Impact on Workers’ Compensation Claims.”

Rich Lenkov Presents at ClaimsXchange Webinar


The panel addressed questions concerning the growing psychological trauma employees are claiming due to COVID-19, topics included analyzing the legitimacy and science behind COVID-19 psychological claims and strategies for defending psychological claims.

Watch “COVID-19’s Impact on Workers’ Compensation Claims.”

Rich Lenkov Presents at WorkCompCentral’s Webinar


Watch “Illinois COVID Update and Takeaways for Other States.”

June 2020
Assessing Liability in Evans v. Walmart

Capital member Storrs Downey, income members Jeff Kehl and Jeanmarie Calcagno provided an analysis of the first COVID-19 wrongful death suit filed in Cook County and addressed other potential COVID-19 wrongful death suits on 4/10/20.

Watch “Assessing Liability in Evans v. Walmart.”

BDL Is Growing!

Peter Havighorst joins our Chicago office, focusing on workers’ compensation and related civil litigation matters involving third-party defense and subrogation. He is a certified Medicare secondary payer professional and manages exposure and liability on complicated medical benefit assessments to efficiently resolve disputes.

Prior to joining Bryce Downey & Lenkov, Peter handled workers’ compensation and employment matters, as well as commercial litigation for several Chicagoland law firms. Outside the office, Peter enjoys traveling with his family and searching for the elusive perfect golf swing.

Daniel Korban has represented clients in a wide range of workers’ compensation, general liability, product liability and civil litigation cases. He has previously acted as lead counsel in all aspects of litigation, from pre-filing negotiation to jury trial, and has also handled criminal defense matters.

In his spare time, Dan enjoys cycling, music and woodworking. His Chicago-based ultimate frisbee team has competed at nationals for the past three years and recently placed 10th in the nation.

View more information about our Workers’ Compensation practice.

Our other practices include:

- Appellate Law
- Business Law
- Condominium Law
- Construction Law
- Entertainment Law
- General Liability
- Healthcare Law
- Insurance Law
- Intellectual Property
- Labor & Employment
- Products Liability
- Professional Liability
- Real Estate
- Transportation Law

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Upcoming Events

- 7/8/20 – Storrs Downey, Jeff Kehl and Jessica Jackler will present “Reopening Your Business Amid COVID-19,” addressing employer safety protocols and pitfalls, handling employees who test positive for COVID-19 and understanding the new worker’s compensation law. Register now.

- 7/16/20 – Rich Lenkov will present at Business Insurance’s webinar “Workers’ Compensation Presumption and COVID-19.” This webinar will address essential employees’ COVID-19 claims and tackle issues associated with the presumption they caught the virus at work.
Kirsten Kaiser Kus Secures Zero Income member Kirsten Kaiser Kus recently secured a fully favorable decision for a large tarp systems manufacturer. Plaintiff alleged that he became seriously injured while moving a large 300 lb bulkhead. Plaintiff underwent an emergency L4-5 micro discectomy and lumbar fusion at L4-5 with pedicle screw fixation. Plaintiff claimed he was permanently and totally disabled and unable to work as a result of these injuries, making the claim value over $400,000.

Throughout the course of the claim, Kirsten uncovered a lengthy history of pre-accident back problems with multiple hospital admissions. Kirsten highlighted the inconsistencies and Plaintiff’s lack of credibility between his pleadings, discovery answers and deposition testimony. She was also able to present a credible expert medical opinion that Plaintiff’s medical condition was not caused by his alleged work injury.

Indianapolis Hearing Member Parsons ruled that the weight of the credible evidence was against Plaintiff and Plaintiff received zero benefits.

Geoff Bryce Presents at NBI’s Construction Law Webcast

Capital member Geoff Bryce presented at National Business Institute’s “Construction Law Hot Topics: Coronavirus Disruptions and Claims” webcast on 6/17/20. The webinar provided a timely update on the rights, duties and obligations of construction project participants during this unprecedented time.

See full agenda.

Rich Lenkov, Kirsten Kaiser Kus & Michael Milstein Present at CLM Workers’ Compensation and Retail, Restaurant & Hospitality Conference

Capital member Rich Lenkov presented “A Match Made in Heaven — How to Build a Strong Attorney-Client Relationship” on 6/17/20. This session addressed effective fraud investigation in workers’ compensation claims and focused on how to assemble the best team possible, areas of responsibility and the importance of continuity and cohesiveness.

Income member Michael Milstein presented “5 x 4 — Five Compelling Workers’ Compensation Topics from Four Different Perspectives” on 6/17/20. The fast-paced session featured a panel of all-star workers’ compensation professionals as they discussed five of the most compelling and current workers’ compensation topics from the perspectives of an arbitrator, claims manager, petitioner’s attorney and defense attorney.

Income member Kirsten Kaiser Kus presented “Light Duty Works...If You Do” on 6/18/20. This panel discussed how employers can monitor an injured workers’ medical treatment, get employees back to work as efficiently as possible and strategies for moving a claim in the right direction.
Rich Lenkov Quoted in Business Insurance on COVID-19’s Effect on Workers’ Compensation

Capital member Rich Lenkov was quoted in several Business Insurance articles discussing COVID-19’s impact on the workers’ compensation industry. In “More Legacy Comp Claims Closures Anticipated with Pandemic,” Rich discussed efforts to close older workers’ compensation claims due to the pandemic. The pandemic’s significant economic impact has forced many claimants who previously declined settlement offers to request to settle their workers’ compensation claims due to lack of income.

Rich has noticed the trend and stated that “many employers and carriers want to maintain their cash reserves during this uncertain economic environment and so are in no rush to pay on workers comp claims.” The slowdown in cases being heard in courts, as well as anticipated claims management staff layoffs has also created an expected uptick in closures.

Read “More Legacy Comp Claims Closures Anticipated With Pandemic.”

Rich was also quoted discussing the challenges of workers’ compensation claims related to the COVID-19 pandemic in “Coronavirus Comp Claims present Challenges: Experts.”

Rich stated that from a legal perspective, COVID-19 workers’ compensation claims will be very difficult to prove, but also noted “there’s going to be a lot of sympathy” for first responders, health care workers, grocery workers, delivery drivers and other essential workers, which may lead judges and arbitrators to allow claimants some leeway regarding their burden of proof.

Read “Coronavirus Comp Claims present Challenges: Experts.”

Storrs Downey & Jessica Jackler Present at NBI’s Mini Law School for HR Professionals

Capital member Storrs Downey and associate Jessica Jackler presented at National Business Institute’s (NBI) webinar “Mini Law School for HR Professionals” on 5/20/20. Storrs and Jessica discussed current developments in workplace behavior, necessary documentation for disciplining and discharging employees, and employee handbooks and policies in the 21st century.

See full agenda.

Brian Rosenblatt Presents at NAPAMA Livestream Licensing Webinar


Brian and the rest of the panel covered types of licenses needed for live streaming, challenges related to intellectual property rights and strategies to execute successful licensing contracts.

Learn more about NAPAMA.
Chase Gruszka Presents at NBI’s Medical Malpractice Webinar

Associate Chase Gruszka presented at National Business Institute’s (NBI) “The Attorney’s Medical Malpractice Playbook” webinar on 5/12/20. His presentation “Electronic Medical Records (EMRs) and Discovery” covered topics such as EMR regulations, system and user-related errors that lead to medical malpractice, searching and hiring qualifying medical experts.

See full agenda.

ABA’s Entertainment & Sports Lawyer Spring 2020 Issue

The Spring 2020 issue of American Bar Association’s (ABA) Entertainment & Sports Lawyer is now available. The quarterly publication provides readers practical information, public policy and scholarly viewpoints on current entertainment and sports industry matters.

Select feature topics for the Spring 2020 issue include defenses for non-performance amid COVID-19, 2020 music copyright decisions, celebrity trademarking before and after death, e-sports and more.

Income member Brian Rosenblatt serves as editor-in-chief.

Read the Entertainment & Sports Lawyer Spring 2020 Issue.

Rekeia Williams Aids Students in Need During COVID-19 Pandemic

Bryce Downey & Lenkov docket clerk Rekeia Williams was recently featured on CBS Chicago for helping six charter school students who were struggling with access to laptops during COVID-19.

The students needed laptops to be able to participate in e-learning, but CPS was not able to provide computer devices for all students. Rekeia serves as a mentor to several local charter students and turned to her fellow neighbors to ask if anyone was willing to donate their older laptops. She was flooded with responses and expedited the donations to students in need.

Watch Rekeia’s interview with CBS.
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.

Sound Bite: In a special edition of Legal Face-Off, we discuss important issues in the wake of George Floyd’s death including police enforcement training, racial inequality and inclusion initiatives.

Dr. Cedric Alexander: George Floyd died in front of all of us in this country and around the globe. It is unexplainable, it is unacceptable. They weren’t trained that way; no one is trained that way... I can send you to a police academy, but here’s what I cannot train you: I cannot train you to understand the importance of humanity. I cannot train you to be empathetic. I cannot train you to be compassionate towards your fellow American and any other human being—that you cannot learn in an academy... This has set policing back 1000 years and they will need to work twice as hard to regain that trust and sense of legitimacy.

Antonio Romanucci: Think of how many lost opportunities and chances there were for those police officers knowing that Chauvin was committing a crime, knowing that George Floyd was going to die. How many chances did they have to stop and instead intervene? You know we hear about this code of silence—that’s it in play right there. You saw it happening on video in public display. George Floyd is dead because people violated his rights and because we have a systemic culture of abuse and racial inequality in this country when it comes to policing white people vs. black people. I believe in America and everybody that lives in this country is an American and I want all of us to be treated equal.

Bryan Parker: Your black employees, friends, colleagues—they are not alright. This is a continuing pattern that has been happening in our country. Check in on people’s mental state and if they’re not okay, does your organization give them the space to do the healing that they need to do? Do you offer wellness courses or things like that? Also, on the internal side when you talk about inclusion initiatives, don’t let the COVID-19 pandemic be an excuse to cut back on these needed investments.

Recent Topics
- George Floyd
- LGBTQ SCOTUS ruling
- CPD removal from CPS
- Travis Smiley trial
- Conversion therapy ban for LGBTQ minors
- AG William Barr

Recent Guests
- Gloria Allred
- Lisa Madigan
- Richard Painter
- Alan Dershowitz
- Former Solicitor General Gregory Garre
- Directors Julie Cohen and Betsy West of RBG

Gloria Allred on Harvey Weinstein, Bob Fioretti on Running for Cook County State’s Attorney, Rachel Goodman on Cuccinelli, & Casey Pick on Virginia’s Conversion Therapy Ban for LGBTQ Minors

Honig on AG Barr, Block & Goodman on Blago, Meiselas on suing the Astros and Madigan on women before the Supreme Court

Murphy on Harvey Weinstein, Legittino on Tavis Smiley trial, State Rep. West on Illinois sex education house bill, and much more

Zelizer on Impeachment, State Rep. Griffey on Transgender Athletes & VanSumeren on his Journey from Prison to Attorney

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