



BRYCE DOWNEY & LENKOV  
LLC

## Workers' Compensation Newsletter June 2016

Upcoming Webinar!  
6/30/16  
The 5 Factors Determining  
Illinois Permanency: What  
Do They Really Mean?  
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### THE TOP 5 LIST

## Top 5 Ways to Close A Difficult Illinois Workers' Compensation Claim

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov Workers' Compensation Department

### 1/ Close that file!

A long held misconception is that you can't close a file without paying some permanency benefits. Not every injury warrants permanent partial disability. You can safely close your file if you have paid due TTD and medical benefits and there is no indication of permanent impairment. Doing so may drive the claimant to an attorney, so consider a nominal PPD offer to resolve the claim.

### 2/ Try the case

Don't be afraid to draw a line in the sand and proceed to trial. While most cases settle, there is also value in going to trial. You reduce your leverage if your opponent knows that you are going to settle every case. Making a firm decision to try a case, especially a questionable one, pays other dividends in questionable claims that may come up later. Despite popular opinion, you can win a case at trial in Illinois.

### 3/ File a motion to dismiss

While some believe that there is no provision in the Illinois Workers' Compensation Act or case law allowing an arbitrator to dismiss a case for want of prosecution, we disagree. We have successfully dismissed cases where claimants are missing IMEs, not following vocational rehabilitation or failing to move their case forward.

### 4/ Use alternative dispute resolution

We regularly use pre-trials, settlement days and mediation to close cases. While some techniques, like mediation, are not frequently used in Illinois, we successfully use it to resolve difficult cases.

### 5/ Make a proactive offer

Make an offer, even without a demand. This allows you to be pro-active and take control of the claim. Remember, all attorneys are ethically bound to take all your settlement offers back to their clients, so it's a great way to move your case forward.



By: [Michael Milstein](#)



There has been a flurry of activity this past month in Springfield as legislators tried reaching a consensus on a budget. However, the legislature failed to pass a budget for the 2017 fiscal year.

The Democratic-controlled House of Representatives recently passed its own spending plan without any of the pro-business reforms sought by Governor Rauner, including changes to the workers' compensation system. That bill was rejected by the Illinois Senate. The Illinois Senate passed their own plan, which was rejected by the House of Representatives. None of the proposed plans had any workers' compensation reform.

The parties are heading back to the drawing board to reach an agreement to end the year long impasse.



**SOUND BITE: Professor Benjamin Chaffee discusses smokeless tobacco and Tony Gwynn.**

**Rich Lenkov:** Doctor, thanks for joining us. So in the news this past week, Tony Gwynn's family filed a wrongful death lawsuit on Monday in San Diego in superior court against Altria Group, formerly known as Phillip Morris, and several other defendants.

**Professor Benjamin Chaffee:** Smokeless tobacco companies angled their products to intertwine smokeless tobacco as part of the sporting culture. Certainly athletes were using smokeless tobacco for decades before these marketing campaigns, but at about the time Tony Gwynn was coming up and others like him in the 1970's, cigarette smoking among athletes was declining substantially.

**Rich Lenkov:** If I was defending this lawsuit, I would say that Tony Gwynn was aware of the risks of chewing tobacco. There is no way he can use 2 cans of chewing tobacco a day for the amount of time that he did and not be aware of it. And if he wasn't aware, there is a big warning label on the can that said how dangerous it was.

**Professor Benjamin Chaffee:** Estimating risk is something we don't do very well. There's a real push to promote smokeless tobacco as a lower risk, less harmful alternatives to cigarettes. When you talk to young people and they hear 'less dangerous', the interpretation often becomes not dangerous at all. Underestimation of how dangerous this product is widespread. The inability to communicate what your risk level truly is where I think our legal team can go after the industry.

[Click Here To Listen To The Full Episode:  
http://wgnplus.com/category/legal-face-off/](http://wgnplus.com/category/legal-face-off/)

Recent Topics:

- Food labels
- Smokeless tobacco
- Legal Prep Charter Academy
- Snapchat

Recent Guests:

- Alan Dershowitz
- Professor Benjamin Chaffee, University of California San Francisco School of Dentistry, Assistant Professor
- Sam Finkelstein, Chicago Legal Prep Academy CEO and Co-Founder
- Gloria Allred

[The Legal Prep Charter Academy, Benjamin Chaffee discusses Smokeless Tobacco, 'Inside Out' with David Susler and Christina Martini, and The Legal Grab Bag w/ Bill Cosby, Tom Brady and Drew Peterson's murder trial](#)

[Food label litigation, Uber driver wage lawsuits, Starbucks iced coffee lawsuit and more](#)

[ACLU's lawsuit alleging CIA's use of torture, Tom Brady's suspension, "Bystander Effect" in relation to Marques Gaines' death, Uber settlement, Dennis Hastert sentencing](#)

Please like us on [Facebook](#) and [subscribe in iTunes](#). Send us your questions and we will answer them on air—nothing is off limits.

## Upcoming Seminars

- On 8/21-8/24/16, Rich Lenkov, Justin Nestor and Maital Savin will present at the 71st Annual Workers' Compensation Educational Conference & 28th Annual Safety & Health Conference. [Click Here](#) for more info and to register
- On 9/15/16, Rich Lenkov will present **State Law -- Consequences And Outcomes** at the NAMSAP 2016 Annual Meeting & Educational Conference. [Click Here](#) for more info and to register

## No Vocational Or Maintenance Benefits Owed After Termination For Cause

By: [Maital Savin](#)



In *Hopper v. Illinois, State of/Dept. of Transportation*, 10 IL. W.C. 41725 (Ill. Indus. Com'n 2015), the Commission addressed an issue of first impression. The question was whether an employer is responsible for paying vocational rehabilitation and maintenance benefits after terminating an employee for cause.

Petitioner injured her shoulder at work. A few months later, Respondent terminated Petitioner for not working during her scheduled work hours and misusing her work vehicle. Respondent could have accommodated Petitioner's permanent restrictions if Petitioner was still employed. Petitioner was unable to find a job through her self-directed job search and requested vocational rehabilitation benefits. The arbitrator held that Respondent was not liable for vocational rehabilitation and maintenance benefits because it could have accommodated her permanent work restrictions if not for her termination. On review, the Commission affirmed the arbitrator's decision.

### Practice Tip:

Remember, no vocational or maintenance benefits are due to a claimant who reached MMI but was terminated for cause. As such, employers should be sure to keep their workers' compensation carriers updated on claimants' employment statuses.

## Startled Petitioner Wins Benefits

By: [Kevin Borozan](#)



In *Kuzma v. U.S. Steel*, 12 IL. W.C. 003521 (Ill. Indus. Com'n 2016), the Commission addressed whether an accident caused by Petitioner reacting to a cat jumping out of a crate arose out of and in the course of employment.

Petitioner worked in the maintenance services and utilities department. As he was attempting to retrieve materials outside in a fenced area at work, he was surprised by a cat jumping out of a crate. Petitioner spun around and hit his left arm on the crate, resulting in a full thickness rotator cuff tear, tendon tears and biceps tendinopathy.

The arbitrator found that Petitioner's accident arose out of and in the course of his employment because the crate was on the employer's premises and Petitioner testified that feral cats were a problem in the area. The arbitrator held that the risk of Petitioner reaching into a crate and being surprised by an animal was higher than that faced by the general public. The Commission affirmed and adopted the decision.

### Practice Tip:

Employers should try to neutralize known risks, including wild animals, to minimize the potential for employee injuries.

## Giving Back

### BDL Attends The National Restaurant Association Show

On **5/20/16**, Bryce Downey & Lenkov attended the National Restaurant Association Show. We represent many food companies, restaurants and retailers and attend various conferences to stay apprised of various developments.



## Did You Know?

In addition to workers' compensation, we also handle:

- [Business Litigation](#)
- [Business Transactions & Counseling](#)
- [Corporate/LLC/Partnership Organization & Governance](#)
- [Construction](#)
- [Employment & Labor](#)
- [Entertainment Law](#)
- [Insurance Coverage & Litigation](#)
- [Intellectual Property](#)
- [Medical Malpractice](#)
- [Professional Liability](#)
- [Real Estate](#)
- [Transportation](#)

## Free Monthly Webinars

### What you said about our 5/26/16 webinar, "10 Common Causation Scenarios And How to Defend Them"

*"I like that the presenters deal with issues/claims directly related to those on my desk."*

*"Love the actual scenarios."*

*"I liked having to think about the situation. It is always a challenge to get into the mind set of Illinois law. I would like to have Bryce Downey and Lenkov in other states such as California and New York."*

*"The interaction and scenarios were great."*



Upcoming Webinar  
6/30/16

#### **The 5 Factors Determining Illinois Permanency: What Do They Really Mean?**

Rich Lenkov  
Tim Alberts

[Click Here to Register](#)

[Tim Alberts](#) implements a thorough yet aggressive approach when representing employers in their workers' compensation claims. He graduated with honors and earned his Juris Doctor degree from John Marshall Law School.

#### Recent Webinars

- Reduce Your Legal Expenses NOW!
- WC Horror Stories
- More Top 5 Lists
- WC Issues Raised By Millennials
- What The Movies Can Teach You About Handling WC Claims
- Compensable Or Not? 10 Common Accident Scenarios And How To Defend Them

If you would like a copy of any of our other prior webinars, please email our Marketing Coordinator Jason Klika at [jklika@bdlfirm.com](mailto:jklika@bdlfirm.com).

## Cutting Edge Legal Education

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

[rlenkov@bdlfirm.com](mailto:rlenkov@bdlfirm.com)

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

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

Some of our previous seminars include:

- Turning The Tables: Using An Employee's Own Actions As A Defense To Their Workers' Compensation Claim
- Closing The Nightmare Case
- Workers' Compensation 101
- Mandatory CMS Reporting Requirements: What You Need To Know
- Managing & Closing WC Claims In A Cost-Effective Manner
- Top 10 Ways To Reduce Legal Expenses NOW
- The Mediation Process
- Balancing Aggressive Pursuit Of Lien Recovery With Associated Litigation Expenses
- Dealing With Difficult Claimants
- Health-Related Leave: Workers' Compensation, ADA and FMLA

# Illinois Rates At A Glance



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# PPD Benefits Schedule Of Body Parts

Effective Dates	Maximum TTD	Minimum PTD & Death	State Average Weekly Wage
7/15/10 - 1/14/11	\$1,243.00	\$466.13	\$925.08
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

Effective Dates	Maximum PPD	Minimum Rate Death & Total Permanent Disability: 50% of the Statewide Average Weekly Wage
7/1/04 - 6/30/05	\$567.87	
7/1/05 - 6/30/06	591.77	
7/1/06 - 6/30/07	619.97	<b>Maximum Rate Death Benefit:</b> The greater of \$250,000 or 20 years
7/1/07 - 6/30/08	636.15	Effective 2/1/06 – the greater of
7/1/09 - 6/30/10	664.72	\$500,000 or 25 years
7/1/10 - 6/30/11	669.64	<b>Temporary Total Disability (TTD) Rate:</b> 66-2/3% (.667) x AWW
7/1/11 - 6/30/12	695.78	
7/1/12 - 6/30/13	712.55	<b>Permanent Partial Disability (PPD) Rate:</b> 60% (.6) x AWW
7/1/13 - 6/30/14	721.66	
7/1/14 - 6/30/15	735.37	
7/1/15 - 6/30/16	755.22	

\*Number of 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 - 7/14/16	\$220.00	*	\$253.00	\$286.00	\$319.00	\$330.00

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.

**Disclaimer:**

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