

## Workers' Compensation Newsletter April 2018

Upcoming Webinar!  
4/19/18  
Ask Us ANYTHING  
Part II  
[Register Here](#)



### THE TOP 5 LIST

## Top 5 Accidents That You Should Question

By: [Rich Lenkov](#)  
Chair, Bryce Downey & Lenkov Workers' Compensation Department

### 1/ Any Accident Away From Work

To be compensable, an accident has to arise out of and in the course of employment. The further away from work that the accident occurs, the more you should question it. To be compensable, an accident occurring away from work has to have some nexus to employment and benefit the employer.

### 2/ Traveling Employees

Similarly, you should question any accident occurring when an employee is traveling. Just because an employee is traveling, doesn't make them a "traveling employee," eligible for benefits. And even if they are a "traveling employee," their actions still have to be reasonable and beneficial to work.

### 3/ Commuters

Commuting to and from work is generally not compensable.

### 4/ Intoxication

You should deny any claim where there's evidence that the claimant was under the influence of drugs or alcohol. In Illinois, employers receive a rebuttable presumption that drugs or alcohol caused the accident, rather than work.

### 5/ Repetitive Use

There are very few jobs repetitive enough to cause an injury. In order to prove their repetitive trauma claim, the employee must provide evidence, most often backed up by an expert, proving that their job involved prolonged and repetitive gripping hand movement. This is very difficult to prove. The most likely cause of these types of injuries has nothing to do with work.



By: [Michael Milstein](#)



With the gubernatorial race finalized between Governor Rauner and J.B. Pritzker, we can expect to hear a lot from both sides about the importance of workers' compensation and what the candidates will do to reform the system.

In the meantime, though the Illinois legislature has only met sporadically over the last few months, a repeat bill that was previously vetoed by Governor Rauner was again proposed: HB 4595, which would create the Illinois Employers Mutual Insurance Company from a loan by the Director of Insurance from the Illinois Workers' Compensation Commission Operations Fund. We have written about this before when it was initially proposed. However, as Governor Rauner vetoed it when it passed both Houses before, we don't expect its fate to be any different this time around.



**SOUND BITE:** Chicago Tonight political journalist **Amanda Vinicky** joins the show to recap the Illinois primary election.

**Rich Lenkov:** Let's start with the governor race, Rauner is the Republican candidate. He won but by a lot closer margin than many people thought J.B Pritzker, actually won by a bigger margin than a lot of people thought.

**Amanda Vinicky:** The fact that Rauner barely won is truly remarkable. When you look back at his tenure in the beginning, I have described as he is being feared really by Republican legislators because he had so much money. He took complete control of the party and they voted in lockstep with him and then you see this turn around. On the Democratic side, that decisive victory by Pritzker was to me surprising. I mean, he was bent casted as the front runner and I guess that's what 70 million dollars will do for you. He really cleaned out and that of course, coupled with all of the things that are going to hurt Rauner is best for J.B Pritzker.



## [Click Here To Listen To The Full Episode:](#)

### Recent Topics:

- Facebook data breach
- Mueller investigation
- Gun control
- "Time's Up"/Me Too movement
- Supreme Court decisions

### Past Guests:

- Alan Dershowitz
- Gloria Allred
- Jesse Jackson
- F. Lee Bailey
- Sheriff David Clarke

[IL Attorney General candidates Pat Quinn & Sharon Fairley, Gloria Allred on Netflix documentary, sanctuary state lawsuit & more](#)

[Gun control laws in the wake of Parkland, Michigan State University president resignation, non-disclosure agreements & more](#)

[Gubernatorial candidate Daniel Biss, can the 25th Amendment bump Trump?, "Fire & Fury", "Time's Up" and more](#)

[Cook County Board candidates Lowry & Degnen, a former football pro turned barrister, the Newtown legacy & more in the last LFO of 2017!](#)

[Can Trump obstruct justice?, Bob Fioretti on his run for Cook County Board President, Blago](#)

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

# Benefits Denied For Slip & Fall On Paid Break

By: [Jeanmarie Calcagno](#)



In *Berger v. State of IL Dept. of Commerce & Economic Opportunity*, Petitioner's claim for benefits was denied on the basis that her accident did not arise out of her employment. Petitioner slipped on the floor of the lobby in the building where she worked during a mandatory paid break. The building was open to the public and owned by her employer. Petitioner testified that she believed that she slipped on a substance but did not see anything on the floor. As Petitioner failed to prove that her accident was caused by a hazardous condition of her employer's premises or by a risk incidental to her employment, her claim was denied.

## Practice Tip:

If Petitioner cannot prove what she slipped on, deny the claim.

# Differing Post-Judgment Interest Rates Cause Confusion

By: [Timothy Alberts](#)



In *Dobbs Tire & Auto v. Illinois Workers' Compensation Commission*, 2018 IL App. (5th)160297WC, the Appellate Court clarified the question of what percentage rate to use when calculating post-appeal interest.

Petitioner won at arbitration and subsequent appeals on the merits by the employer resulted only in a minimal decrease in the award. The employer paid the award and interest pursuant to Section 19(n).

After payment from the employer, Petitioner filed a Motion for Enforcement of Judgment and Interest on Workers' Compensation Commission Decision pursuant to 820 ILCS 305/19(g).

The Circuit Court granted the motion and ordered the employer to pay additional interest at the 9% rate mandated by Section 2-1303 of the Code.

Section 19(n) of the Act provides, in relevant part, that:

"Decisions of the ... Commission reviewing an award of an arbitrator of the Commission shall draw interest at a rate equal to the yield on indebtedness issued by the United States Government with a 26-week maturity next previously auctioned on the day on which the decision is filed. Said rate of interest shall be set forth in the Arbitrator's Decision." 820 ILCS 305/19(n) (West 2014).

Section 2-1303 of the Code of Civil Procedure, on the other hand, provides for a specific interest rate of 9% to calculate post-judgment interest (735 ILCS 5/2-1303 (West 2014)).

Before the Appellate Court, the question was whether an employer is liable to pay interest at the rate calculated by the Commission according to Section 19(n), or the 9% rate pursuant to Section 2-1303 of the Code of Civil Procedure.

The Appellate Court held that so long as the employer pays the award, plus interest under Section 19(n), prior to the award being reduced to a judgment under Section 19(g), additional interest under Section 2-1303 of the Code is not owed.

## Practice Tip:

The correct interest rate for calculating the payment of an award can always be found on the cover page of the Arbitration Decision.

## Firm News

### New Website & Logo

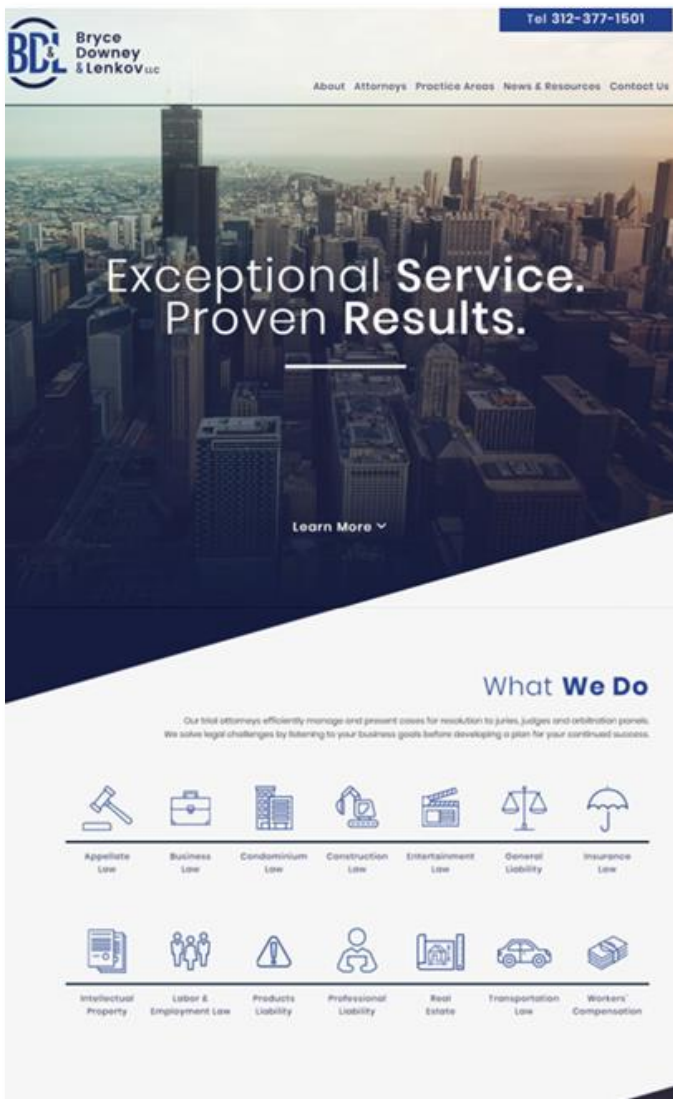


We're excited to announce that our brand new website is officially up and running! We have redesigned it with you in mind, restructuring menus, simplifying navigation and providing more resources and information on our services.

We encourage everyone to visit and explore the site. To stay connected, follow us on [Twitter](#), [LinkedIn](#) and [Facebook](#).



[New BDL website!](#)



## Upcoming Seminars

- On 4/18/18, [Storrs Downey](#) will present "Sexual Harassment in The Workplace: Confronting & Addressing This Growing Problem" at The Institutes CPCU Society monthly member meeting. For more information, [click here](#).
- On 5/23/18, [Rich Lenkov](#) will participate in "Navigating Mild Traumatic Brain Injury Cases In The Workers' Compensation Environment" at the 2018 CLM & Business Insurance Workers' Compensation Conference. For more information or to register, [click here](#).
- On 5/23/18, [Tricia Bellich](#) will participate in "Premium--It's Not Just About Price!" at the 2018 CLM & Business Insurance Workers' Compensation Conference. For more information or to register, [click here](#).

## 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 3/27/18 webinar,  
Top 15 Indiana Workers' Compensation Tips

***"Quick and to the point. It was easy to follow"***

*"Helpful information, presenters are actually interested & engaged in their topic"*

***"I liked the ideas/opinions given that we can use to encourage insureds to reduce costs, encourage quicker return to work turnaround"***



Upcoming Webinar  
4/19/18

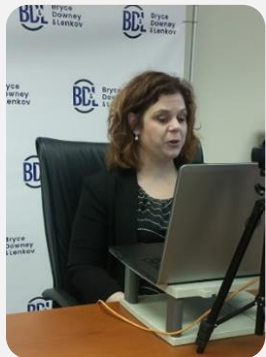
### [Ask Us ANYTHING Part II](#)

[Rich Lenkov](#)  
[Michael Milstein](#)

[Register Here](#)

### Recent Webinars

- The Ups & Downs Of Upper & Lower Extremity Claims
- Illinois Workers' Compensation Reform
- New OSHA Regulations
- 1<sup>st</sup> Annual Great American BDL WC Quiz
- Common Workers' Compensation Issues Defined
- Indiana Forms: Taking A Claim From Start To Finish



If you would like a copy of any of our other prior webinars, please email us at  
[mkt@bdlfirm.com](mailto:mkt@bdlfirm.com)

## Cutting Edge Legal Education

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

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

- 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



# PPD Benefits Schedule Of Body Parts

Effective Dates	Maximum TTD	Minimum PTD & Death	State Average Weekly Wage
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
7/15/16 - 1/14/17	1,428.74	535.79	1,071.58
1/15/17 - 7/14/17	1,435.17	538.19	1,076.38
7/17/17 - 1/14/18	1,440.60	540.23	1,080.45

Effective Dates	Maximum PPD
7/1/06 - 6/30/07	619.97
7/1/07 - 6/30/08	636.15
7/1/09 - 6/30/10	664.72
7/1/10 - 6/30/11	669.64
7/1/11 - 6/30/12	695.78
7/1/12 - 6/30/13	712.55
7/1/13 - 6/30/14	721.66
7/1/14 - 6/30/15	735.37
7/1/15 - 6/30/16	755.22
7/1/16 - 6/30/17	775.18
7/1/17-6/30/18	790.64

**Minimum Rate Death & Total Permanent Disability:**  
50% of the Statewide Average Weekly Wage

**Maximum Rate Death Benefit:**  
The greater of \$250,000 or 20 years  
Effective 2/1/06 – the greater of  
\$500,000 or 25 years

**Temporary Total Disability (TTD) Rate:**  
66-2/3% (.667) x AWW

**Permanent Partial Disability (PPD) Rate:**  
60% (.6) x AWW

\*Number if 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 - 7/14/17	\$220.00	*	\$253.00	\$286.00	\$319.00	\$330.00

**CHICAGO, IL:**  
200 North LaSalle Street  
Suite 2700  
Chicago, IL 60601  
Tel: 312.377.1501  
Fax: 312.377.1502

**SCHERERVILLE, IN:**  
833 West Lincoln Highway  
Suite 210  
Scherville, IN 46375  
Tel: 219.488.2590  
Fax: 219.213.2259

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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