

Chapter 1

Ten Things Governmental Officials Don't Know About Workers' Compensation

Gerald A. Granada and W. Britt Isaly

1. WHAT IS WORKERS' COMPENSATION?

Workers' Compensation generally describes the benefits afforded to employees who are injured while working or who suffer from a condition that arises out of and in the course of that employee's employment. These benefits are set forth in the Illinois Workers Compensation Act ("Act") – state legislation that can be found in 820 ILCS 305 of the Illinois Compiled Statutes. Essentially, there are three main Workers Compensation benefits, which are:

- 1) TTD or temporary total disability benefits,
- 2) Medical/rehabilitation expenses,
- 3) Permanent Disability Benefits.

TTD or Temporary Total Disability benefits

If an employee is injured while on the job and there is no dispute that the injury arose out of and in the course of the job, that employee is entitled to payment of TTD while that employee is off work due to the injuries. TTD is usually 2/3 of what the employee would be earning per week. However, in some governmental bodies that have a specific policy for compensating employees on work disability or in the case of fire fighters or police officers, an injured employee who loses time from work will get his or her full pay while off work for up to a year.

Medical/Rehabilitation benefits

If the injured employee incurs medical expenses related to a work injury, those expenses will be paid through workers compensation. In some cases, an employee may need vocational rehabilitation (e.g. hiring a vocational counsellor) because the worker cannot return to the original job. A vocational expert can be provided as a workers compensation benefit in order to get the injured employee back to work, if not with the government, then with another employer that can accommodate any physical restriction the employee may have as the result of the work injury.

Permanent Disability Benefits

Permanent disability represents the third benefit that an injured employee may be entitled to as the result of the work related injury. Permanent Disability is usually discussed when the employee has reached a point in medical treatment, where no further treatment is warranted or where the employee has been released from treatment – also known as MMI or maximum medical improvement. There are cases where Permanent Disability

can be discussed although the employee will need continuing medical treatment for an indefinite period of time. Permanent Partial Disability (“PPD”) is compensation for the injured employee’s loss of use of a specific body part, or a percentage of disability referred to as a proportional loss of the person’s ability “as a whole”. Disability may also be expressed as the person’s loss of future earnings due to the injury.

2. WHO IS PROTECTED THROUGH WORKERS’ COMPENSATION?

The Act basically provides coverage for all elected and appointed local governmental and school district officials and all their employees. It does not cover injuries to volunteers although some insurance policies and governmental pools provide such coverage.

3. HOW IS WORKERS COMPENSATION DIFFERENT FROM A LAW SUIT?

As a historical note, the Act is the product of compromise between both employers and employees. The Act insulates employers from civil lawsuits where litigants can claim damages that can add up into millions of dollars. In return for this, the Act puts caps on the monetary recovery of injured workers by creating a formula for calculating damages limited by the injured employee’s earnings and the statutory impairment schedule set forth in the Act. The Act also created the Illinois Workers’ Compensation Commission – a state administrative agency that employs arbitrators and commissioners to act as judges in adjudicating workers’ compensation claims filed in the State of Illinois. Some of the most notable differences between workers’ compensation claims and civil lawsuits are the following:

- An application for Adjustment of Claim is filed with the IWCC as opposed to a complaint in the Circuit Court.
- There is no discovery or traditional pleadings in WC cases (Trial by ambush)
- Although there is a 45 day notice requirement following the injury, an injured employee has 3 years from the date of accident or 2 years from the date of the last payment of WC benefits
- Litigated WC claims are tried before an Arbitrator although the Court Rules of Evidence do apply
- Arbitration decisions can be appealed to a panel of Commissioners and their decision can be appealed to the Circuit Court in the county where the case is venued
- Attorney fees for claimant attorneys are set at 20% of whatever is recovered at trial or via settlement
- Injured employees cannot seek pain and suffering or punitive damages
- Some Arbitrators and Commissioners are not attorneys and have had no legal education prior to their appointment to the Commission

4. HOW IS IT DETERMINED HOW MUCH AN EMPLOYEE GETS THROUGH WORKERS’ COMPENSATION?

Once the injured employee has reached maximum medical improvement – meaning that he/she is released from medical treatment and the condition or injury and the condition or injury will no longer improve, the case should be evaluated for how much permanent injury has been sustained by the employee. This is usually described as the loss of use of a particular body part, termed Permanent Partial Disability, or “PPD”. Essentially, the Act ascribes weeks of disability for various parts of the body, such as a leg, arm, foot, etc. There is also a category called “man as a whole” that encompasses the back, torso and situations where a case cannot simply be limited to particular body parts (e.g. loss of earnings, traumatic head injuries, multiple body parts injured). In some circumstances, an employee who can no longer perform his/her previous job may be entitled to wage differential benefits or permanent total disability benefits for the rest of his or her life. As a basic workers’ compensation principle, PPD benefits are calculated by the following formula: 60% of AWW (Average Weekly Wage) multiplied by a percentage of loss of use of a body part. Determining the percentage of loss is done through either negotiation between the parties involved or decided by an arbitrator or the Commission.

As an illustration, an employee earning \$500.00 on average per week, who loses his little finger in an accident resulting in a complete amputation of that finger, may be entitled to \$6,600.00 (60% of \$500 x 22 weeks which represents 100% loss of use of a little finger). If for some reason, that employee has difficulty using his entire hand as a result of the injury and amputated finger, then the case would have to be evaluated as a loss of a hand. In any event, it is very important that a municipality should work closely with both the claim adjuster handling the claim and the legal counsel if there is any question regarding the calculation of what an employee should receive as a result of a work related injury.

5. WHAT ARE SOME WAYS TO DEFEND AGAINST WORKERS’ COMPENSATION CLAIMS.

Given that an underlying principle behind workers’ compensation is to liberally construe the Act to benefit workers, usually workers’ compensation cases are resolved through agreements and compromises made between the injured employee and the employer through their representatives. However, there are many cases where a claim is questionable due to the facts alleged by the employee, the medical records or the circumstances surrounding the claimant’s employment . In those cases, employers should be proactive in doing the following:

- Educating supervisors and employees on completing accident reports timely, and include the date the report was completed, the name of the person completing the report and a signature of that person
- Investigating injuries immediately by taking witness statements if possible
- Photographing the area where a questionable accident occurred
- Following up on information re alleged outside activities that may have caused an injury to an employee
- Providing immediate medical attention to employees hurt on the job

Finding new ways to accommodate injured employees with either temporary or permanent disabilities as a result of a work injury
Following up regularly with an injured employee

It is very important to work closely with both the claims adjuster and your defense counsel when considering challenging a claim to determine the specific actions to be taken before claim can spiral out of control. It is also important in dealing with governmental employees that the personnel policies of the employer are reflected in the manner in which the defense is pursued. Malingering or fraudulent employees should be caught but long term excellent governmental employees must be treated, if at all possible, with an eye to their successful return to work.

6. Police Officers and Firefighters Are Entitled to More Than Workers' Compensation For One Full Year After The Injury.

Any police officer or firefighter who is injured in the line of duty causing him to be unable to perform his duty is entitled to one full year's worth of full salary under the Public Employee Disability Act ("PEDA") (5 ILCS 345/1(b)). Many municipalities unnecessarily pay other employees full pay while off work, (such as Public Works employees,) when only police officers and firefighters are statutorily required to be paid full salary for one year. After one full year's worth of full salary, if the injured police officer or firefighter continues to remain disabled because of a work related injury, the compensation goes back to TTD, or two-thirds of the employee's average weekly wage computed as of the date of the accident. PEDA has also recently been interpreted by the case of *Albee v. City of Bloomington* as entitling police officers and firefighters to a full year's worth of full salary when many municipalities had previously interpreted PEDA to require only payment of one calendar year from the date of the injury. *See* 849 N.E.2d 1094, 302 Ill. Dec. 682 (4th Dist. June 2, 2006) It will be incumbent on payroll officers of your municipality to keep track of injuries in the line of duty which cause disability and whether the police officer or firefighter is able to return to work. The employee should always be required to show a dated and signed physician's slip to prove that the claim for PEDA benefits is still the result of the original line of duty disability. The payroll officer will also need to calculate and pay out 52 weeks of full pay, while excluding dates the employee works light or full duty.

7. Interaction of the Family Medical Leave Act and Workers' Compensation.

When an employee is unable to work because of a serious health condition, the Family Medical Leave Act ("FMLA") entitles a qualified employee up to 12 weeks of unpaid leave for any 12 month period. Workers' compensation TTD benefits and FMLA leave may run concurrently. In other words, while the employee receives workers' compensation and is prescribed to be off work, the 12 weeks period of FMLA time may run concurrently with the TTD benefits. This is sometimes referred to as an "anti-stacking provision." We would strongly recommend that if the local government has any

written guidance to employees concerning employee benefits or leave rights, (such as an employee handbook,) that such anti-stacking provisions are provided in the handbook allowing the local government to designate a leave resulting from a work injury as FMLA-qualifying, and that it will run concurrently with the workers' compensation absence. Note also that it is the employer's responsibility to designate leave, paid or unpaid, as FMLA-qualifying and that it is also the employer's responsibility to give notice of this designation of it being an FMLA leave to the employee.

8. No Temporary Total Disability Until The Fourth Day.

If an employee suffers a work related injury and has been medically required to be off work for three days or less, the employee is not entitled to TTD benefits (two-thirds of wages). Instead, the employee may use sick time or vacation time for these three days. If, however, the period of temporary total disability is an incapacity for work lasting more than three working days, weekly compensation shall be paid beginning on the fourth day of such incapacity and continue for as long as the total temporary incapacity lasts. When the temporary total incapacity for work continues for a period of fourteen days or more from the date of the accident, compensation shall commence on the date after the accident. In other words, if the employee is off work for fourteen days or more, you have to repay the first three days in TTD benefits. If, in this situation, the employee has been paid sick or vacation time and has been off work for fourteen days or more, these first three days of sick or vacation time must be reimbursed to the employee and TTD benefits instead should be paid.

9. Evidence You May Have From Police Pension and Firefighter Disability Cases That Can Be Used in Workers' Compensation Cases.

Municipalities should always be aware that evidence gathered in a workers' compensation case may be used in a pension hearing for either police officers or firefighters. There has been much litigation about whether the Workers' Compensation Commission or the Pension Board is collaterally estopped or prevented from litigating certain evidence that has already been litigated in an earlier proceeding. If you have a pension hearing approaching with a police officer or firefighter, always obtain the evidence from the workers' compensation case, (if there was one) for use by your municipality's attorney. The municipality's attorney may wish to intervene in the Pension Board's case, in order to present such evidence. It is at the discretion of the Pension Board to allow such intervention.

10. Settlement of a Case Closes All Issues.

When considering whether or not to settle a case or to go to trial, always remember that by trying the case, if the claimant wins, the claimant is entitled to keep his medical rights open indefinitely into the future. Of course, the employee would still be required to prove any future medical treatment is still related to the original work accident. If, on the other hand, the case is settled, all related liabilities will likely be settled along with it, not requiring the employer to pay for any future medical treatment

or increase disability once the case is settled with a settlement contract. Each case is different, and you must consult with your attorney the reasons for trying or settling a case. However, keep in mind that liability may not always end with a trial award on the case, as the employee may apply for future medical benefits related to the work accident.

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