

## ILLINOIS

---

1. **Citation for the state's workers' compensation statute.**

820 Illinois Compiled Statutes Annotated 305/1, *et seq.* (2011).

### SCOPE OF COMPENSABILITY

2. **Who are covered "employees" for purposes of workers' compensation?**

Every person in the service of another under any contract of hire and all employees whose contract of hire is in the state or if hired outside the state, where their principal place of business is in the state. 820 ILCS 305/1(b)(2). Employees of a business that has elected to be covered by the Worker's Compensation Act, are covered. There is a long list of businesses declared to be "extra-hazardous" with all employees covered automatically by law. This includes construction, trucking, mining, warehousing, working with molten metal, explosives and sharp tools, bar employees, restaurant employees if they cut food, haircutting, surveying and gas station employees. 820 ILCS 305(3). Exempted are real estate brokers/salespeople on commission and farmers. Jurors are not to be considered "employees" of the jury commission for purposes of the workers' compensation act. Jaskoviak v. Industrial Commission, 337 Ill. App. 3d 269, 272 (3 Dist. 2003).

3. **Identify and describe any "statutory employer" provision.**

Where a subcontractor is uninsured, the employee of that subcontractor may recover compensation under the Act from the general contractor or from the individual or entity, if any, that engaged the services of the general contractor. The subcontractor is then liable for indemnification. 820 ILCS 305/1(a)(3).

4. **What type of injuries is covered and what is the standard of proof for each:**

A. **Traumatic or "single occurrence" claims.**

All injuries arising out of and in the course of the employment are covered. 820 ILCS 305/2. They must have their origin in some risk so connected with, or incidental to, the employment as to create a causal connection. Accident includes repetitive trauma.

B. **Occupational disease (including respiratory and repetitive use).**

Occupational diseases are covered under a separate Act. 820 ILCS 310/1 *et seq.* Essentially the same rules and benefits apply but all references are to different sections of the law. Once again a risk of employment must be shown to aggravate or cause a disabling condition.

5. **What, if any, injuries or claims are excluded?**

Accidental injuries incurred while participating in voluntary recreational programs including athletic events, parties and picnics, do not arise out of or in the course of employment even though the employer pays some or all of the cost thereof. This exclusion shall not apply in the event that the injured employee was ordered or assigned by his employer to participate in the program. Woodrum v. Industrial Commission, 336 Ill. App. 3d 561 (4 Dist. 2003); 820 ILCS 305/11. Accidental

injuries while participating as a patient in a drug or alcohol rehabilitation program do not arise out of and in the course of employment even though the employer pays some or all the costs thereof. 820 ILCS 305/11.

**6. What psychiatric claims or treatments are compensable?**

Physical-mental injuries have always been compensable if the mental disability is traced to an accidental physical injury. Mental-mental cases are mostly denied but can be compensable in extreme situations. "Where an employee experiences a sudden, severe emotional shock which could be the reaction of a person with normal sensibilities, the resulting psychiatric injury is compensable." Pathfinder Co. v. Industrial Commission, 62 Ill. 2d 556, 563 (1976). The employee there had removed the severed hand of a friend from a machine and it understandably affected her emotionally. Recovery for non-traumatically induced mental disease is limited to those who can establish that: (1) The mental disorder arose in a situation of greater dimensions than the day to day emotional strain and tension which all employees must experience; (2) the conditions exist in reality from an objective standpoint; and (3) the employment conditions, when compared with the non-employment conditions, were "the major contributing cause" of the mental disorder. Chicago Board of Education v Industrial Commission, 169 Ill. App. 3d 459 (1 Dist. 1988). However, in a Mental-physical injury case an employee need not show stress exceeding the stress of coworkers. Rather, an employee need only prove that the usual stress of the workplace is greater than the stress experienced by the general public. Badgett v. Industrial Commission, 201 Ill. 2d 187 (2002).

**7. What are the applicable statutes of limitations?**

In any case other than where the injury was caused by exposure to radiological materials or equipment, or asbestos, a claim must be filed within three years of the date of accident where no compensation has been paid, or within two years after the date of the last payment of compensation where any has been paid, whichever is later. 820 ILCS 305/6(d). Continuing negotiations with the injured employee by claims adjustors or attorneys can estop the employer from asserting the statute defense.

**8. What are the reporting and notice requirements for those alleging an injury?**

Notice of the accident must be given to the employer as soon as practical, but not later than forty-five days after the accident. 820 ILCS 305/6(c).

**9. Describe available defenses based on employee conduct:**

**A. Self-inflicted injury.**

The available defense would be that such an injury did not arise out of and in the course of the employment. Some suicides have been held compensable if the evidence showed that the suicide was the result of the sequelae of the injury.

**B. Willful misconduct, "horseplay," etc.**

Again, the defense would be that the injury did not arise out of and in the course of the employment. Saunders v. Industrial Commission, 189 Ill. 2d 623 (2000).

**C. Injuries involving drugs and/or alcohol.**

Pursuant to 2011 amendments to 820 ILCS 320/11, an employee will not be entitled to compensation if the intoxication was the proximate cause of the accidental injury, or if the employee was so intoxicated when the injury occurred that it constituted a departure from the employment. If there is evidence that the blood alcohol level exceeded .08%, or if there is evidence of illegal drugs in the employee's body, there is a rebuttable presumption that the intoxication was the proximate cause of injury.

**10. What, if any, penalties or remedies are available in claims involving fraud?**

The amendments of 2005 made it illegal to fraudulently file or deny a claim. It is now a class A misdemeanor to make a false report and any person convicted of such acts could have to repay benefits at a multiple level and pay attorney fees and costs. 820 ILCS 305/25(5). The amendments of 2011 also made it illegal for a medical provider to intentionally present a medical bill for payment when there has been no treatment.

**11. Is there any defense for falsification of employment records regarding medical history?**

No.

**12. Are injuries during recreational and other non-work activities paid for or supported by the employer compensable?**

Accidental injuries incurred while participating in voluntary recreational programs such as athletic events, parties, and picnics, do not arise out of and in the course of the employment, even where the employer pays some or all of the cost thereof. This exclusion does not apply when the employee was ordered or assigned by the employer to participate in the program. 820 ILCS 305/11.

**13. Are injuries by co-employees compensable?**

Yes, if the injury arose out of and in the course of the employment, it is compensable under worker's compensation. However, if an assault by the co-employee arises out of a personal conflict, the injury caused by the co-employee is not compensable. Additionally, if the injured employee is found to be the aggressor in the assault, benefits should be denied.

**14. Are acts by third parties unrelated to work, but committed on the premises, compensable (e.g. "irate paramour" claims)?**

No. Acts that arise from personal aggression do not create a compensable injury. There must be a risk of employment to arise out of employment.

**BENEFITS****15. What criterion is used for calculating the average weekly wage?**

Wages earned in the fifty-two weeks preceding the accident, excluding overtime, are calculated and divided by 52. If a full week is not worked both the total earned and the divisor are reduced so that only full weeks are used in the calculations. 820 ILCS 305/10. Overtime is to be included where the overtime is regular and required by the employer. The case law is inconsistent as to

what constitutes regular and required hours. In occupational disease cases, overtime is always included.

**16. How is the rate for temporary/lost time benefits calculated, including minimum and maximum rates?**

The rate for temporary/lost time benefits is two-thirds of the average weekly wage, with a statutory minimum starting at \$246.67 if single, and increasing by the number of dependents up to four, but never more than the employee's actual weekly wage. The maximum rate is 133.34% of the state average weekly wage. From 1/15/21 through 7/14/21, the maximum temporary total disability rate is \$1613.93. See [www.iwcc.il.gov/rates.pdf](http://www.iwcc.il.gov/rates.pdf).

**17. How long does the employer/insurer have to begin temporary benefits from the date disability begins?**

There is no specific time line but there are substantial penalties if it is later determined that temporary total disability benefits were delayed in an unreasonable or vexatious manner. The penalties can include attorney fees and costs under 820 ILCS 305/16 and a daily \$30 penalty to a maximum of \$10,000 since 2/1/06. 820 ILCS 305/19(l)

**18. What is the "waiting" or "retroactive" period for temporary benefits (e.g. must be out \_\_\_ days before recovering benefits for the first \_\_\_ days)?**

The employee must be out fourteen days before recovering benefits for missing the first three scheduled work-days.

**19. What is the standard/procedure for terminating temporary benefits?**

Temporary benefits can be terminated if there is a doctor's report stating that the employee is at maximum medical improvement or that he or she is able to work with restrictions and a job is offered within those restrictions. Reliance on such a report is not an automatic defense to the penalties for unreasonable and vexatious withholding of benefits mentioned above, especially if the treating doctor says otherwise.

**20. Is the amount of temporary total disability paid credited toward the amount entitled for permanent partial disability?**

No.

**21. What disfigurement benefits are available and how are they calculated?**

Disfigurement is calculated at the permanent partial disability rate, up to a maximum of 150 weeks,

if the injury occurred before 7/20/05 or between 11/16/05 and 1/31/06. 820 ILCS 305/8(c).

Between 7/20/05 and 11/15/05 and after 2/1/06, the disfigurement maximum is 162 weeks.

**22. How are permanent partial disability benefits calculated, including the minimum and maximum rates:**

The compensation rate shall be equal to 60% of the employee's average weekly wage. For the time period of 7/1/20 to 6/30/21, the maximum rate is \$871.73, and the minimum is \$246.67.

**A. How many weeks are available for scheduled members/parts, and the standard for recovery.**

Injuries before 7/20/05 and between 11/16/05 and 1/31/06 use the lower number of weeks. Injuries between 7/20/05 and 11/15/05 and after 2/1/06 use the higher number.

100% loss of use of the leg	200	215	weeks
amputation at knee	225	242	weeks
amputation at hip joint	275	296	weeks
100% loss of use of the foot	155	167	weeks
100% loss of the arm	235	253	weeks
amputation at elbow	250	270	weeks
amputation at shoulder	300	323	weeks
100% loss of the hand	190	190	weeks
100% loss of the great toe	35	38	weeks
100% loss of the other toes	12	13	weeks
100% loss of use of the thumb	70	76	weeks
100% loss of the index finger	40	43	weeks
100% loss of the middle finger	35	38	weeks
100% loss of the ring finger	25	27	weeks
100% loss of the little finger	20	22	weeks
100% loss of hearing (one ear)	50	54	weeks
100% loss of hearing (both ears)	200	215	weeks
100% loss of one testicle	50	54	weeks
100% loss of both testicles	150	162	weeks
100% loss of the eye	150	162	weeks
enucleation of the eye	160	173	weeks

In injuries arising before September 1, 2011, the standard for recovery is based upon what percentages the parties agree upon, or an arbitrator's decision. 820 ILCS 305/8(e). Beginning September 1, 2011, permanent partial disability shall be determined by a licensed physician using the American Medical Association's "Guide for Evaluation of Permanent Impairment." The arbitrator, in making his award, shall consider the rating of the physician, along with other factors such as the occupation, age of the employee at the time of the injury, the employee's future

earning capacity and evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. Unfortunately, few Arbitrators actually apply the AMA ratings as most Illinois physicians are still unfamiliar with the process. As a result, ratings are still generally decided solely by the arbitrator.

The amendments to 2011 further limit the recovery for carpal tunnel permanency to a maximum of 15% of the hand unless there is clear and convincing evidence of more disability, with an upper limit of 30%.

**B. Number of weeks for "whole person" and standard for recovery.**

Loss of 100% of the person as a whole is 500 weeks. 820 ILCS 305/8(d)(2). Again, the standard for recovery is determined by a percentage agreement of the parties or an arbitrator's decision.

**23. Are there any requirements/benefits for vocational rehabilitation, and what is the standard for recovery?**

If the employee is unable to return to the previous occupation, then the employer must pay for vocational rehabilitation. While the employee is undergoing vocational rehabilitation, the employer must pay benefits at the temporary total disability rate but the benefits are called "maintenance." Once the employee has begun working a new job, if the new rate of pay is less than the employee's old rate of pay, the employee may apply for a wage-loss benefit, instead of permanent partial disability. In that case, the employer must pay two-thirds of the difference between the two for as long as there is a difference. Under the older cases the cap per week is the maximum PPD rate. Under the new law the maximum is 100% of the state average weekly wage. 820 ILCS 305/8(b)4. Pursuant to the 2011 amendments, for injuries arising on or after September 1, 2011, an employee is entitled to his wage loss differential only until age 67 or five years from the date of any final award, whichever is longer. 820 ILCS 305/8(d)1.

**24. How are permanent total disability benefits calculated, including the minimum and maximum rates?**

Compensation for permanent total disability is paid weekly for life, at a rate equal to two-thirds of the employee's average weekly wage with minimums and maximums determined by the date of accident, changing every six months. For the most recent time period announced, between 7/15/13 and 1/14/14, the minimum is \$499.20 and the maximum is \$1,331.20 per week.

**25. How are death benefits calculated, including the minimum and maximum rates:**

**A. Funeral expenses.**

\$8,000.00. 820 ILCS 305/7(f).

**B. Dependency claims.**

Both total and partial dependency claims may be maintained by certain beneficiaries identified by statute, including a surviving widow, widower, child, parent or grandparent. The amount and duration of benefits are dependent upon facts such as the level of dependency and the familial

relationship of the survivor to the deceased employee, as well as the physical and mental capacity of any surviving children, and whether a surviving child is enrolled in an educational institution at the time. 820 ILCS § 305/7.

### **C. Rates**

Death benefits are paid weekly at a rate equal to two-thirds of the employee's average weekly wage with minimums and maximums determined by the date of accident, changing every six months. For the most recent time period announced, between 1/15/20 and 7/14/20, the minimum is \$580.90 and the maximum is \$1,549.07 per week. The cap is 25 years or \$500,000 whichever is greater.

#### **26. What are the criteria for establishing a "second injury" fund recovery?**

It is highly restricted and almost never seen. There must have been a prior 100% loss of an enumerated body part (hand, arm, foot, leg, or eye). Then, in a subsequent independent accident, if the employee suffers 100% loss of another such member, he or she would be entitled to recovery from the second injury fund. 820 ILCS 305/7-305/8.

#### **27. What are the provisions for re-opening a claim for worsening of condition, including applicable limitations periods?**

Any claim that is settled by a lump sum settlement contract cannot be re-opened except for fraud. If the case has gone to decision by an arbitrator or an agreement has been reached for payments in installments, the case can be reviewed, within thirty months (old law, now 60 months) after such award, by the Commission at the request of either the employer or the employee on the grounds that the disability of the employee has subsequently recurred, increased, diminished, or ended. Only a physical change is considered, not an economic one. 820 ILCS 305/19(h).

#### **28. What situation would place responsibility on the employer to pay an employee's attorney fees?**

If the employer, his or her agent, service company or insurance carrier has been guilty of unreasonable or vexatious delay, intentional underpayment of compensation benefits or has engaged in frivolous defenses which do not present a real controversy within the purview of the provisions at 820 ILCS 305/19(k), the employer and/or insurance carrier may be held liable for all or any part of the attorney's fees and costs. 820 ILCS 305/16.

## **EXCLUSIVITY/TORT IMMUNITY**

#### **29. Is the compensation remedy exclusive:**

##### **A. Scope of immunity.**

The Worker's Compensation Act is the exclusive remedy as to the employee. However, this is an affirmative defense that must be asserted by the employer. A third-party defendant can bring the employer back into a civil lawsuit with limitations on recovery.

##### **B. Exceptions (intentional acts, contractual waiver, "dual capacity," etc.).**

Minors have the same rights and obligations as adults, except that illegally employed minors may reject the Act within six months after an accident, and may then sue at common law

An employer can be held liable on a third-party action seeking contribution pursuant to the Joint Tortfeasors Contributions Act up to the employer's relative degree of culpability, but not to exceed the employer's maximum liability under the Illinois Workers' Compensation Act. Kotecki v. Cyclops Welding Corp., 146 Ill. 2d 155 (1991) where the Illinois Supreme Court held that an employer's liability to a third-party plaintiff is limited to the amount of workers' compensation benefits paid to the injured employee. This position is an affirmative defense and must be affirmatively plead or it will be deemed waived. It can also be contractually waived by entering into an agreement with another entity waiving the protection for contribution to an employee's injury. Braye v. Archer Daniels Midland, 175 Ill. 2d 201 (1997).

**30. Are there any penalties against the employer for unsafe working conditions?**

If the Commission finds that an actual injury was directly and proximately caused by the employer's willful violation of a health and safety standard under the Health and Safety Act, 820 ILCS 225/1, as amended and in force at the time of the accident, the arbitrator or the Commission will allow to the employee, or his or her dependents, additional compensation equal to 25% of the amount which otherwise would be payable under the provisions of the Act. 820 ILCS 305/19(m).

**31. What is the penalty, if any, for an injured minor?**

If the employee is under sixteen years old at the time of the accident, and is illegally employed, the employee or his or her legal representative can within six months after the injury or death elect to reject his or her right to benefits under the Act and pursue his or her common law and statutory remedies to recover damages for such injury or death. Where the employee waives his or her right to reject benefits under the Act in favor of collecting workers' compensation benefits, no payment of compensation shall be made unless such payment and the waiver of the right to reject benefits has first been approved by the Commission, because payment of compensation to the employee is a bar to subsequent rejection of the exclusivity of remedy under the Act. The amount of compensation payable under Act is increased by 50% for an illegally employed minor. 820 ILCS 305/5(a), 820 ILCS 305/7(h)

**32. What is the potential exposure for "bad faith" or claims handling?**

Penalties awarding attorney fees and costs under 820 ILCS 305/16, for failure, without good cause, to pay weekly benefits or medical expenses due to an employee. Also, failure to pay temporary total disability, if considered unreasonable or vexatious, results in a daily penalty of \$10 under the old law or \$30.00 per day under the new law for each day the payment has been so withheld. The old maximum was \$2,500 and the new is \$10,000.00. 820 ILCS 305/19(l). A delay of 14 days creates a rebuttable presumption that the delay was unreasonable.

If the Commission finds that any employer/insurer practices a policy of delay or unfairness towards employees in the adjustment, settlement or payment of benefits, the Commission may, after reasonable notice and hearing, order that such employer/insurer shall discontinue writing workers' compensation insurance in the state. 820 ILCS 305/4(c).



**33. What is the exposure for terminating an employee who has been injured?**

The employee could have a wrongful discharge action at common law for discriminating against an employee pursuing workers' compensation benefits. Kelsay v. Motorola, 74 Ill. 2d 172 (1978).

### THIRD PARTY ACTIONS

**34. Can third parties be sued by the employee?**

Yes.

**35. Can co-employees be sued for work-related injuries?**

Yes. However, the plaintiff must plead and prove that the co-employee acted deliberately and with specific intent to injure. Copass v. Illinois Power Co., 211 Ill.App.3d 205 (4 Dist. 1991).

**36. Is subrogation available?**

Yes. There is a lien for workers' compensation benefits paid if the employee has filed a suit at common law against the third party. If, within three months of the running of the statute of limitations, the employee has not filed, the employer may file against the third party. 820 ILCS 305/5(b). The employer is to pay a pro rata share of costs and expenses and the attorney is entitled to a statutory 25% fee.

### MEDICALS

**37. Is there a time limit for medical bills to be paid, and are penalties available for late payment?**

Medical bills are now to be paid within 30 days or interest incurs at a rate of 1% per month. Late payment of medical bills may result in attorney fees pursuant to 820 ILCS 305/19(k) or daily fines for failure to pay if held unreasonable or vexatious. 820 ILCS 305/19(l)

**38. What, if any, mechanisms are available to compel the production of medical information (reports and/or an authorization) at the administrative level?**

Any hospital, physician, surgeon or other person rendering treatment or services must, upon written request, furnish full and complete reports and permit their records to be copied in any proceeding for compensation before the Commission. 820 ILCS § 305/8(a). Moreover, the Industrial Commission has the subpoena power to compel the production of medical information.

**39. What is the rule on (a) Claimant's choice of physician; (b) employer's right to second opinion and/or Independent Medical Examination?**

**A. Claimant's choice of physician.**

The employee may choose as many physicians as he or she wishes. However, the employer-insurer is only responsible for payment of the bills for the first two choices and their referrals. These are called "chains of referral." 820 ILCS 305/8(a). All bills are subject to reasonableness and necessity.

With the amendments of 2011, the employer or its representative can now create a panel of

medical providers and submit that panel to the Illinois Department of Insurance for approval. After an injured employee notifies the employer of his injury or files a claim for workers' compensation, the employer must inform the employee in writing of his or her right to be treated by a physician of his or her choice from the preferred provider network. If the employee accepts the medical provider within the network, that constitutes his or her first choice. An employee may decline in writing to be treated within the network, but the act of declining constitutes a choice, leaving the employee with only one additional choice. 820 ILCS 305/8(a)4.

**B. Employer's right to second opinion and/or Independent Medical Examination.**

An employee entitled to receive disability shall be required, if requested by the employer, to submit, at the expense of the employer, for an examination by a duly qualified medical practitioner or surgeon selected by the employer, at any time or place reasonably convenient for the employee. 820 ILCS 305/12. Called the IME by defendants, a Section 12 examination by plaintiffs. There is a tendency in the case law to prefer the opinion of a treating doctor over a Section 12 examiner which undercuts the purpose of the examination.

**40. What is the standard for covered treatment (e.g. chiropractic care, physical therapy, etc.)?**

The employer/insurer is liable for the payment of reasonable and customary charges for reasonable, necessary and causally related treatment. Chiropractors are frequently used.

**41. Which prosthetic devices are covered, and for how long?**

Almost all prosthetic devices are covered, as long as they are related to the accident. If the device was covered by a settlement agreement, the time can be limited. If the device was part of an award, any future medical need is open.

**42. Are vehicle and/or home modifications covered as medical expenses?**

Yes.

**43. Is there a medical fee guide or schedule, or other provisions for cost containment?**

Yes. There is now a medical fee schedule, adjusted yearly, that applies to procedures, treatments or services covered under the Act and rendered on or after 2/1/06. 820 ILCS 305/8(2). Pursuant to the 2011 amendments, the fee schedule has been rolled back for injuries after 9/1/11 by 30%. 820 ILCS 305/8(2)a. Beginning 1/1/12, the geo-zips will be consolidated and there will be four geo-zips for non-hospital fee schedules and fourteen geo-zips for hospital fee schedules, down from the previous twenty-nine geo-zips.

An employer may also engage in utilization review. 820 ILCS 305/8(7). The 2011 amendments state that utilization review shall now be based upon recognized treatment guidelines and evidence based medicine and will be overseen by the department of insurance. An employer may only deny payment of medical services if an accredited utilization review finds that the scope of the treatment is excessive.

**44. What, if any, provisions or requirements are there for "managed care"?**

None. In practice, managed care takes place with the permission of plaintiff's attorney.

## PRACTICE/PROCEDURE

**45. What is the procedure for contesting all or part of a claim?**

Upon the filing by the employee of an Application for Adjustment of Claim, the matter is assigned to an arbitrator. There is no answer required. The claim is then set before an arbitrator on a "status call" every three months. A party may request a hearing 15 days in advance of the next status call. A petitioner may file for an emergency hearing at any docket, whether set or not, relative to the issues of temporary total disability or payment of medical benefits. At each status call, the claim is automatically continued unless a hearing has been requested. After three years have elapsed from the time of filing, the claim can be dismissed within the discretion of the arbitrator for failure to prosecute. At that point a motion letter is required for continuances and it must show good cause.

**46. What is the method of claim adjudication?**

**A. Administrative level.**

Arbitrators hear the initial case. A party not satisfied can file a Petition for Review with the Workers' Compensation Commission. A Commission panel consisting of three commissioners hears the review. No new evidence may be submitted on review. However, the Commission does have original jurisdiction and may look at issues de novo.

**B. Trial court.**

Any decision of the Commission may be appealed to the circuit court in the county in which the accident occurred. At that level, the standard is whether the decision of the Commission was against the manifest weight of the evidence or the commission erred as a matter of law.

**C. Appellate.**

Any decision of the circuit court may be appealed to a special panel of the Appellate Court. This workers' compensation panel consists of one justice from each of the five judicial districts in Illinois. Again, the standard is whether the decision of the Commission was against the manifest weight of the evidence or the commission erred as a matter of law. Appeals to the Supreme Court are very rare.

**47. What are the requirements for stipulations or settlements?**

Any settlement contract must be approved by an arbitrator or a commissioner.

**48. Are full and final settlements with closed medicals available?**

Yes, settlement by a lump sum settlement contract closes out medical treatment unless otherwise provided in the contract.

**49. Must stipulations and/or settlements be approved by the state administrative body?**

Yes, an arbitrator or commissioner must approve the settlement.

## RISK FINANCE FOR WORKERS' COMPENSATION

50. What insurance is required, and what is available (e.g. private carriers, state fund, assigned risk pool, etc.)?

Insurance is required unless an employer elects to be self-insured. A number of private insurers are available. Some entities form assigned risk pools. There is no state fund.

51. What are the provisions/requirements for self-insurance?

**A. For individual entities.**

An application for self-insurance must be filed with the self-insured advisory board. They, in consultation with the Chairman of the Illinois Workers' Compensation Commission, decide whether the entity meets the requirements for self-insurance, and, if so, what the bond requirements will be. The entity must then either post a bond or a cash equivalent.

**B. For groups or "pools" of private entities.**

Such groups are subject to the same requirements as individual self-insureds. Some businesses or pools operate with a self-insured retention. This amount can be anywhere from \$10,000.00, to \$800,000.00. The insurance policy then acts as an excess policy.

52. Are 'illegal aliens' entitled to benefits of workers' compensation as The Immigration Control Act indicates that they cannot be employees although most state acts include them within the definition of 'employee'?

"Illegal aliens" are entitled to benefits under the Illinois Workers' Compensation Act. 820 ILCS § 305/1(b)(2). Benefits have been denied to foreign beneficiaries of illegal aliens normally entitled to death benefits. There is further a question as to whether or not an employer can be required to provide rehabilitation benefits since the illegal aliens cannot be placed in jobs legally. There are no published cases on these issues.

53. Are terrorist acts or injuries covered or excluded under workers' compensation law?

Yes. There is no provision under the Illinois Workers' Compensation Act that would preclude terrorist acts from being covered.

54. Are there any state specific requirements which must be satisfied in light of the obligation of the parties to satisfy Medicare's interests pursuant to the Medicare Secondary Payer Act?

No.

55. How are subrogation liens of Medicaid and health insurers treated under workers' compensation law?

The Federal Medicaid statute requires States to include in their plan for medical assistance provisions (1) that the individual will assign to the State any rights to payment for medical care from any third party and (2) that the individual will cooperate with the State in pursuing any third party who may be liable to pay for care and services available under the Medicaid plan. 42 U.S.C.A. § 1396k(a). The State is authorized to retain such amount as is necessary to reimburse it (and the

Federal Government as appropriate) for medical assistance payments and to pay the remainder to the individual. 42 U.S.C.A. § 1396k(b).

Medicaid and health insurers have a right to file a claim in civil court against any parties involved in a workers' compensation matter for medical bills which should have been covered under a workers' compensation case.

**56. What are the requirements for confidentiality and privacy of medical records under workers' compensation law and how are they affected by state and federal law (HIPAA)?**

HIPAA, 45 C.F.R. parts 160-164 and 65 F.R. 82462 provides an exception for workers' compensation claims so as to allow the collection of medical records by employers and insurers. [45 C.F.R. 164.512(l)] Therefore, your current practice of obtaining medical records could proceed under state law. HIPAA will apply to workers' compensation providers. Therefore, all parties need to be careful in dealing with medical records in worker's compensation matters.

**57. What are the provisions for "Independent Contractors"?**

Multiple factors are considered although the primary one is the right to control the work. An independent contractor represents the will of the owner only as to the result, not the means by which it was accomplished. Other factors considered are the method of payment, the right to terminate, the skill required to do the work and the furnishing of tools, equipment and materials.

**58. Are there any specific provisions for "Independent Contractors" pertaining to professional employment organizations/temporary service companies/leasing companies?**

An employer whose business is hiring, procuring or furnishing employees for other employers is deemed a loaning employer and may be joined as an employer liable for the injury. 820 ILCS 305/1(a)(4).

**59. Are there any specific provisions for "Independent Contractors" pertaining to owner/operators of trucks or other vehicles for driving or delivery of people or property?**

No.

**60. Does your state permit medical marijuana and what are the restrictions for use and for work activity in your Workers' Compensation law?**

Yes, but only for certain medical conditions, including but not limited to ALS, cancer, Crohn's disease, epilepsy, glaucoma, HIV, multiple sclerosis and spinal cord injury. Recent legislation enacted legal recreational marijuana. Most employers have policies prohibiting use of marijuana during work hours. If a work injury is found to be causally related to the use of alcohol or illegal drugs, all benefits are denied.

**61. Does your state permit the recreational use of marijuana and what are the restrictions for use and for work activity in your state Workers' Compensation law?**

Yes, Nonetheless, if a work injury is found to be causally related to the use of alcohol or illegal drugs, all benefits are denied.