

## IOWA

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1. Citation for the state’s workers’ compensation statute.

Iowa Code § 85.1 *et seq.* (2019).

**SCOPE OF COMPENSABILITY**

2. Who are covered “employees” for purposes of workers’ compensation?

All employees not specifically excepted are covered. Exceptions are: household employees earning less than \$1,500 during 12 months prior to an injury; casual employees not hired for purposes of the employer’s trade or business earning less than \$1,500 for 12 consecutive months prior to an injury; agricultural employees where the employer’s nonexempt cash payroll is less than \$2,500 for the preceding calendar year; relatives of farm employer and employer’s spouse; officers of family farm corporation; relatives of a partner or partner’s spouse engaged in agricultural pursuits; exchange of labor by owner of farmland or by a farm operator; top officers of a corporation (not to exceed four) who specifically elect against coverage. Iowa Code § 85.1.

3. Identify and describe any “statutory employer” provision.

There is no such provision.

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

A. Traumatic or “single occurrence” claims, and cumulative injury claims.

Any injury, occupational disease, or occupational hearing loss claim against the employer, and any other employee of the employer, arising out of and in the course of the employment, and not caused by a co-employee’s gross negligence so as to amount to wanton neglect for the safety of another, is compensable. Iowa Code § 85.20. This statutory definition of “gross negligence” is limited to workers’ compensation cases. *Lukken v. Fleischer*, 962 N.W.2d 71, 81 (Iowa 2021).

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

An occupational disease must be incidental to the character of the business, and a direct causal connection with the employment must be shown. A disease from a hazard where the employee was equally exposed outside the employment is not compensable. Iowa Code § 85A.8.

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

Claims against co-employees based on gross negligence; an employee's willful intent to injure himself or herself or another; injury caused by the employee's intoxication; or willful act of a third party directed against the employee for personal reasons, are all excluded. Iowa Code §§ 85.16, 85.20. Additionally, an injury caused by an employee's personal condition is not compensable when the employment does not contribute to the risk or aggravate the injury. See *AARP v. Whitacre*, 834 N.W.2d 870 (table), 2013 WL 2107398, at \*1 (Iowa Ct. App. 2013).

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

Treatment for a mental injury that arose out of a physical injury is compensable, as is treatment for a mental injury that arose out of a mental injury, i.e. a mental injury as a result of a stress claim. See *Brown v. Quik Trip Corp.*, 641 N.W.2d 725 (Iowa 2002); *Dunlavey v. Econ. Fire & Cas. Co.*, 526 N.W.2d 845 (Iowa 1995). These claims have not been extended to "mental injuries arising from intentional wrongful conduct." *Smith v. Iowa State U. of Sci. and Tech.*, 851 N.W.2d 1, 21 (Iowa 2014).

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

Two years from the date of occurrence of the injury, if no weekly benefits have been paid. Three years from the last date of payment in the event that weekly benefits were paid. Following a determination of liability, a review re-opening proceeding may be initiated within three years of the last payment. Iowa Code § 85.26.

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

Notice must be given by the worker to the employer within 90 days of the injury's occurrence. Iowa Code § 85.23. For occupational disease, within 90 days of the first distinct manifestation of disease. *Id.* § 85A.18.

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

**A. Self-inflicted injury.**

Total defense. Iowa Code § 85.16.

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

Willful intent to injure another is a complete defense. Iowa Code § 85.16. An injury during "horseplay" is not compensable. *Ford v. Barcus*, 155 N.W.2d 507 (Iowa 1968); see *Xenia Rural Water Dist. v. Vegors*, 786 N.W.2d 250 (Iowa 2010).

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

A claim may be barred if intoxication was a "substantial factor" in causing the injury. Iowa Code § 85.16. *But see Koehler Elec. & Cont'l W. Ins. v. Wills*, 608 N.W.2d 1 (Iowa 2000) (finding a fall from a ladder due to alcohol withdrawal symptoms to be compensable).

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

There is no statutory provision for claims involving fraud. An agreement between the employer or its insurance carrier and the claimant may be set aside for fraud by the district court, but not by the industrial commissioner. *See Whitters & Sons, Inc. v. Karr*, 180 N.W.2d 444, 447 (Iowa 1970); *Ford*, 155 N.W.2d 507.

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

Yes, for an occupational disease claim. Iowa Code § 85A.7(1).

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

Yes. *See Briar Cliff Coll. v. Campolo*, 360 N.W.2d 91 (Iowa 1984).

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

Yes, so long as they are not caused by the employee's willful intent to injure another, like voluntary involvement in an altercation. Iowa Code § 85.16.

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

No, not for a willful act of a third party directed against the employee for reasons personal to the employee. Iowa Code § 85.16(3).

### BENEFITS

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

For full time employees, the weekly wage rate is based upon the gross weekly earnings of the employee at the time of injury. Iowa Code § 85.36. The law provides various methods of computing the gross weekly earnings, dependent upon the method of payment of wages and, in some cases, upon the classification of the employee. *Id.* § 85.61(3). For a full-time employee paid on a daily or hourly basis, weekly gross earnings are computed using an average of the last 13 consecutive calendar weeks immediately prior to the injury date that "*fairly represent the employee's customary earnings,*" excluding overtime pay, bonuses, expenses, or reimbursement of any expenses. *Jacobson Transp. v. Harris*, 778 N.W.2d 192, 196–97, 199 (Iowa 2010) (quoting Iowa Code § 85.36(6)). The weekly rate is determined based upon the gross weekly wages, the worker's marital status, and the maximum number of exemptions to which the employee is entitled at the time of injury. *See Mercy Med. Ctr. v. Healy*, 801 N.W.2d 865, 868 (Iowa Ct. App. 2011).

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

Temporary Partial Disability: two-thirds of the difference between weekly earnings at the time of injury and actual gross weekly income from employment during temporary partial disability. Iowa Code § 85.33(4).

Healing Period/Temporary Total Disability: weekly compensation benefits are payable until the employee returns to work, is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of the injury, or if is medically indicated that significant improvement from the injury is not anticipated, whichever occurs first. *Id.* §§ 85.33, 85.34. The maximum weekly rate for 2019-2020 is \$1,819. The minimum weekly rate

for 2019-2020 is the lesser of (1) \$318, which is 35% of the current statewide average weekly wage; or (2) the spendable weekly earnings of the employee. Iowa Workforce Dev., *Ratebook 2020*, [iowaworkcomp.gov](http://iowaworkcomp.gov),

<https://www.iowaworkcomp.gov/ratebook-spreadsheet-%E2%80%94-2019%E2%80%932020>

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

Compensation begins on the fourth day of disability after injury. Iowa Code § 85.32.

**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 receiving benefits for the first three days. Iowa Code § 85.32.

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

Temporary total disability benefits are paid until the employee returns to work or is medically capable of returning to substantially similar employment, whichever occurs first. Iowa Code § 85.33(1).

Temporary partial disability benefits are paid for the period of such disability. If commenced, payments shall be terminated only when the employee returns to work, or upon 30 days’ notice stating the basis for termination and advising the employee of the right to file a claim with the Workers’ Compensation Commission. *Id.* § 86.13(2).

If an employee is temporarily, partially disabled and the employer offers to the employee suitable work consistent with the employee’s disability, the employee shall accept the suitable work and be compensated with temporary partial benefits. If the employee refuses to accept the suitable work, the employee shall not be compensated with temporary partial, temporary total, or healing period benefits during the period of the refusal. *Id.* § 85.33(3). The Commissioner may consider the distance of available work from the employee’s home in determining whether an employer has offered “suitable work” for purposes of Iowa Code section 85.33(3). *Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512, 524 (Iowa 2012).

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

No. Permanent total benefits begin after the end of temporary total disability benefits. Iowa Code Section 85.33.

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

The period is determined by the Worker’s Compensation Commissioner according to severity, not to exceed 150 weeks. Iowa Code § 85.34(2)(u).

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

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

The maximum is 80% per week of average weekly spendable earnings, but no more than \$1,819.00 for TTD, HP and PTD and death benefits. The maximum for PPD benefits is \$1,673.00. Iowa Workforce Dev., *Ratebook 2020*, [iowaworkcomp.gov](http://iowaworkcomp.gov),

<https://www.iowaworkcomp.gov/ratebook-spreadsheet-%E2%80%94-2019%E2%80%932020>

Minimum amount for TTD or HP is 35% of state average weekly wage (\$ 318.00) or spendable weekly earnings of the employee, whichever is less. *Id.*

Schedule - represents # of weeks payable for 100% loss of use

|  |               |
|--|---------------|
| thumb  | 60 weeks      |
| index finger   | 35 weeks      |
| second finger  | 30 weeks      |
| third finger   | 25 weeks      |
| fourth finger  | 20 weeks      |
| ** first or distal phalange of thumb or any finger = 1/2 of finger |               |
| more than 1 phalange = entire finger                               |               |
| great toe  | 40 weeks      |
| other toes   | 15 weeks each |
| ** first phalange = 1/2 of toe                                     |               |
| more than one phalange = entire toe                                |               |
| hand   | 190 weeks     |
| arm, or 2/3 of arm between shoulder, elbow                         | 250 weeks     |
| foot   | 150 weeks     |
| leg, or 2/3 of leg between hip and knee                            | 220 weeks     |
| eye  | 140 weeks     |
| loss of remaining eye  | 200 weeks     |
| hearing in one ear   | 50 weeks      |
| hearing in both ears   | 175 weeks     |
| two arms, two hands, two feet, two legs                            | 500 weeks     |
| disfigurement not to exceed  | 150 weeks     |
| other % of disability of body as a whole x                         | 500 weeks.    |

Iowa Code § 85.34(2).

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

500 weeks is used to calculate a whole-person impairment (also known as an industrial disability). After the degree of the industrial disability is determined, the number of weeks payable is found by multiplying the total value of the body as a whole (500 weeks) by the percentage rating. Iowa Workforce Dev., *Ratebook 2020*, [iowaworkcomp.gov](http://iowaworkcomp.gov),

<https://www.iowaworkcomp.gov/ratebook-spreadsheet-%E2%80%94-2019%E2%80%932020>

Lifetime benefits are available for total disability. Iowa Code § 85.34(3).

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

An additional benefit of \$100.00 per week is available when the employee actively participates in a vocational rehabilitation program. Such payments are not to exceed 13 consecutive weeks but may be extended for an additional period not to exceed 13 weeks if continued training will accomplish rehabilitation. Iowa Code § 85.70.

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

Permanent total disability benefits are paid at 80% of the employee's weekly spendable earnings. The maximum rate is \$1,819.00, which is 200% of the state average weekly wage. The minimum is \$318.00 (or 35% of the state's average weekly wage of \$909.43). Iowa Code § 85.34(3). The permanent total benefits are payable as long as the employee remains permanently totally disabled. (See *Ratebook 2020*)

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

**A. Funeral expenses.**

Reasonable expenses of burial, up to \$10,125.72 (12 times the statewide AWW of \$843.81). Iowa Code § 85.28.

**B. Dependency claims.**

A surviving spouse receives 80% of the employee's average weekly spendable earnings, for life or until remarriage. Upon remarriage, the spouse receives two years benefits in a lump sum if there are no children entitled to benefits. A dependent child receives benefits until age 18, or 25 if still dependent (full-time student is considered dependent). A child mentally or physically incapacitated from earning wages continues to receive benefits for the duration of such incapacity. Iowa Code § 85.31.

The maximum rate for dependency benefits is \$ 1,819.00, which is 200% of the state average weekly wage. The minimum rate is \$ 318.00, which is 35% of the statewide average. *Id.*

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

Such benefits may be recovered when an employee, who has previously lost one hand, arm, foot, leg, or eye, becomes permanently disabled by a compensable injury which has resulted in the loss of another such organ or member. Iowa Code § 85.64.

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

Review re-opening within three years of date of last payment of weekly benefits. Iowa Code § 85.26(2).

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

There is no statutory provision for payment of legal fees by the employer to a claimant. Fees or claims for legal services rendered in the district court and appellate courts are subject to approval by a district court judge. Iowa Code § 86.39.

#### EXCLUSIVITY/TORT IMMUNITY

29. **Is the compensation remedy exclusive?**

Yes. Iowa Code § 85.20.

**A. Scope of immunity.**

Workers' compensation benefits are the exclusive remedy for all injuries arising out of and in the course of the employment. *Id.*

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

The employee can bring a separate action in district court for damages caused by a co-employee's gross negligence. Iowa Code § 85.18. Intentional torts such as intentional-infliction-of-emotional-distress claims also fall outside the exclusive remedy provision. *Smith v. Iowa State Univ. of Sci. & Tech.*, 851 N.W.2d 1, 20 (Iowa 2014). It is not possible to waive immunity contractually. Iowa Code § 85.18.

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

Not under workers' compensation law, but yes under OSHA.

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

None under workers' compensation statutes.

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

A first party bad faith tort claim is permitted (failure to pay without a reasonable basis). Also, for a denial or a delay in payments, without reasonable cause, additional benefits (called penalty benefits) may be awarded of up to 50% of the amount unreasonably delayed, denied, or terminated. Iowa Code § 86.13(4). This also includes delay or denial pending an appeal of the award.

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

The exposure is liability in tort for retaliatory discharge. *Springer v. Weeks & Leo Co., Inc.*, 475 N.W.2d 630 (Iowa 1991).

#### THIRD PARTY ACTIONS

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

Yes. Iowa Code § 85.22.

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

Yes, but only if the injury was the result of a co-employee's gross negligence.

### 36. Is subrogation available?

Yes. Iowa Code § 85.22.

## MEDICALS

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

None specified.

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

Parties to a workers' compensation claim have access concerning the employee's physical or mental condition relative to the claim and further waive any privilege for the release of the information. Iowa Code § 85.27. No institution or person releasing such information to a party or its representative shall be criminally or civilly liable for damages by reason of releasing the information. If release of the information is refused, the party requesting it may apply to the Worker's Compensation Commissioner for relief, and the information requested will be ordered to be produced if it is relevant and material to the claim. *Id.*; see also *Morrison v. Century Eng'g*, 434 N.W.2d 874 (Iowa 1989) (finding a workers' compensation claimant had no right to have her attorney present when employer's counsel interviewed claimant's treating physician; claimant waived any privilege pertaining to release of information concerning physical or mental condition). If a petition for benefits is filed, a waiver must be attached to the petition. Iowa Admin. Code r. 876-4.6 (2018).

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

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

Employer has the right to choose physician. Iowa Code § 85.27(4). Claimant may petition for alternate care. *Id.* The Commissioner may award alternate medical care if the employer's choice of treatment is not prompt, is not reasonably suited to treat the employee's injury, or is unduly inconvenient for the employee. *Millenkamp v. Millenkamp Cattle, Inc.*, 832 N.W.2d 384 (table), 2013 WL 1452961, at \*4 (Iowa Ct. App. 2013) (citing *R.R. Donnelly & Sons v. Barnett*, 670 N.W.2d 190, 195 (Iowa 2003) an employer does not fail the "prompt" requirement when its original choice of physician retires and the employee fails to inform the employer of the retirement, thereby delaying the employer's choice of a replacement physician. *Id.* at \*7.

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

When an employee is injured, the employer may require the employee to "submit for examination at some reasonable time and place and as often as reasonably requested, to a physician or physicians ...." Iowa Code § 85.39.

If an employee has been given an impairment rating by a doctor retained by the employer, and the employee believes the rating is too low, the employee can obtain a second opinion or Independent Medical Exam on impairment at the employer's cost. Iowa Code § 85.39.



40. What is the standard for covered treatment (e.g. chiropractic care, physical therapy, etc.)?  
“[R]easonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance and hospital services and supplies.” Iowa Code § 85.27.
41. Which prosthetic devices are covered, and for how long?  
“[R]easonable and necessary crutches, artificial members, and appliances but shall not be required to furnish more than one set of permanent prosthetic devices.” Iowa Code § 85.27.

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

In limited circumstances, a Commissioner could reasonably view a van as an appliance as contemplated by the above workers’ compensation statute because a van may be necessary in order to make a claimant’s wheelchair fully useful. *Manpower Temp. Servs. v. Sioson*, 529 N.W.2d 259 (Iowa 1995). On the same basis, a Commissioner could reasonably view modifications to a home to accommodate a wheelchair as an appliance (*Quaker Oats Co. v. CINA*, 552 N.W.2d 143 (Iowa 1996), and that a computer is an appliance (*Stone Container Corp. v. Custle*, 657 N.W.2d 485 (Iowa 2003)).

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

No. All fees are subject to approval by the Worker’s Compensation Commissioner.

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

The employer has the right to choose the physician and the obligation to pay for reasonable medical expenses incurred for authorized care causally related to the injury. Iowa Code § 85.27(4).

**PRACTICE/PROCEDURE**

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

Filing of a contested case proceeding. Iowa Code § 86.14.

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

**A. Administrative level.**

A contested case proceeding is presided over by the Commissioner or a Deputy Commissioner. Iowa Code § 86.17. Appeal is to the Commissioner. *Id.* § 86.24.

**B. Trial court.**

Judicial Review to District Court. Iowa Code § 86.26.

**C. Appellate.**

Appeal of District Court decision to the Iowa Supreme Court. Iowa Code § 86.26.

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

All settlements must be approved by the Worker’s Compensation Commissioner. Iowa Code §§ 85.35, 86.27.

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

Yes. Iowa Code § 85.35.

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

Yes. Iowa Code §§ 85.35, 86.13, 86.27.

**RISK FINANCE FOR WORKERS' COMPENSATION**

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

An employer must insure its workers' compensation risk. Iowa Code § 87.1(1). Insurance is available through private insurers, employer group insurance associations, and self-insured plans.

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

**A. For individual entities.**

For individual employers, a self-insured plan needs to be approved by the Insurance Commissioner. Iowa Code § 87.4(3). A self-insured workers' compensation plan for cities, counties, or community colleges does not require approval. *Id.* § 87.4(4). The plan (if approval is required) must meet the Commissioner's established minimum financial standards to adequately cover reasonably anticipated expenses. *Id.* § 87.4(3)(b).

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

Groups or "pools" of private entities in the same industry can qualify for group self-insurance. The standards are similar to those for individual self-insurers (e.g., must establish financial ability to pay claims as they come due). See Iowa Code § 87.4.

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

Yes. The Iowa Supreme Court has expressly held an undocumented worker is an employee within the meaning of the Iowa Workers' Compensation Act; undocumented workers' employment contracts are not unenforceable on grounds that they are in violation of a statute or have an illegal purpose; and federal Immigration Reform and Control Act of 1986 (IRCA) does not preempt the payment of healing period benefits to undocumented workers under Iowa law. See *Staff Mgmt. v. Jimenez*, 839 N.W.2d 640 (Iowa 2013), *as corrected* (Nov. 18, 2013). Illegal aliens are not excluded from the definition of "employee" or "worker" under the workers' compensation statute. Iowa Code § 85.61(11).

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

To be compensable, an injury must arise out of and in the course of employment. A terrorist act would be subject to the same principles applicable to injuries by other third parties. See answer 14.

**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?**

There are no specific requirements; however, contingent settlements are now available to allow the parties time to obtain approval from Medicare. Iowa Code § 85.35(5).

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 plans 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. § 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. *Id.* § 1396k(b).

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)?**

The law 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) (2016). Pursuant to Iowa Code section 85.27, the employee waives any privilege for the release of medical information.

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

Independent Contractors are not considered employees but may elect to be covered by purchasing a valid Workers' Compensation Insurance Policy specifically including the Independent Contractor. Iowa Code § 85.61(11)(c)(2).

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

There are no specific provisions dealing with Independent Contractors that also pertain to professional employment organizations/temporary services companies/leasing companies. *But see Swanson v. White Consol. Indus.*, 77 F.3d 223 (8th Cir. 1996) (holding personal injury judgment against temporary employer was enforceable on an express contract theory between employer and temporary worker); *Fletcher v. Apache Hose & Belting Co.*, 519 N.W.2d 839 (Iowa Ct. App. 1994) (summary judgment for an employer in a temporary employee's negligence action was proper where the employer and employee had an employment relationship, thereby barring the claim under the workers' compensation statute's exclusivity provisions).

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?**

An owner-operator who owns a vehicle licensed and registered as a truck, road tractor, or truck tractor by a governmental agency, is an independent contractor while performing services in the operation of the vehicle if the owner-operator is responsible for the maintenance of the vehicle, the operating costs, the operation of the vehicle, is compensated based on a percentage of the rates, determines the details and means of performing the services, and enters into a contract which specifies the relationship to be that of an independent contractor and not that of an employee. Iowa Code § 85.61(11)(c)(3)(a)-(f).

60. Are there any state specific requirements which must be satisfied in light of the obligation of the parties to protect Medicare's interests when settling the right to medical treatment benefits under a claim?

The requirement to protect Medicare's interests when settling the right to medical treatment benefits under a claim is federally mandated, and every state must therefore abide by the requirement. Most states handle the requirement similarly. Although some states require specific language in the settlement confirming that the interests of Medicare have been considered, Iowa does not.

According to recommendation by the Center for Medicare and Medicaid Services, many states utilize Workers' Compensation Medicare Set-Asides (WCMSA) to ensure that Medicare interests are protected. *See* Ctrs. for Medicare & Medicaid Servs., *Workers' Compensation Medicare Set Aside Arrangements*, CMS.gov, <https://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Workers-Compensation-Medicare-Set-Aside-Arrangements/WCMSA-Overview> (last visited February 1, 2020). A WCMSA is a fund established to pay future work-related-injury medical costs that might otherwise be paid for by Medicare. Typically, a WCMSA is based on the particular state's specific workers' compensation fee schedule. However, Iowa does not have a fee schedule, and the WCMSA is therefore not based upon a fee schedule.

Iowa operates using a closed file or open file settlement. Iowa Code § 85.35. In an open file settlement, parties reach an agreement that the injury arose out of and in the course of employment, and agree on the extent of the subsequent disability. *Id.* § 85.35(2). The insurer agrees to pay for medical expenses as they are incurred. *Id.* In a closed file settlement, which often includes a WCMSA, the injured worker is paid a specific amount of money, and the file is then closed. *See id.* § 85.35(3). The employee forfeits the right to be reimbursed for claim-related expenses once the settlement funds are used up. *See id.* The closed file settlement will therefore often include a WCMSA because without it, the employee could simply rely on Medicare once the funds for medical treatment are exhausted.

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

Yes. A patient who is eighteen years or older and a permanent resident of the state of Iowa may be approved for a medical cannabidiol registration card by the Department of Transportation (DOT) upon 1) submission of a written certification signed by the patient's health care provider that the patient is suffering from a debilitating medical condition; 2) submission of an application to the DOT containing patient's identifying information and; 3) submission of a medical cannabidiol registration card fee; so long as the patient has not been convicted of a disqualifying felony offense. Iowa Code § 124E.4(1) (2019).

If a patient has been issued a medical cannabidiol registration card, they are permitted to possess and use medical cannabidiol pursuant to their registration card. A patient may not smoke medical cannabidiol. Iowa Code § 124E.16 (2019).

A claim may be barred if intoxication was a "substantial factor" in causing the injury. *See* Iowa Code § 85.16. Upon a showing that the medical cannabidiol was not authorized by a medical

practitioner or was not used in accordance with the “prescribed” use of the drug, an employee who regularly uses medical marijuana and suffers an injury in the workplace could be denied benefits. See Iowa Code § 85.16 (2019).

63. 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?

No.