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Alabama

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

Alabama Code § 25-5-1, *et seq*. (1975) (as amended 1992).

SCOPE OF COMPENSABILITY

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

All employees, other than domestic servants, farm laborers, casual employees, and those employed by employers of less than five employees, are covered. Also, licensed real estate agents operating under licensed brokers and product demonstrators are not considered employees. Ala. Code § 25-5-50 (1975).

To qualify as an employee, the worker must meet the statutory definition from Ala. Code § 25-50-1(4), and there must be a contract of hire involving payment of wages. Moreover, In *Birmingham Post Co. v. Sturgeon*, 149 So. 74 (Ala. 1933), the Alabama Supreme Court clarified that trial courts must also assess whether the purported employer retained control over the manner and means by which the work was performed.

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

There is no such provision om Alabama. An "employer" is defined as "[e]very person who employs another to perform a service for hire and pays wages directly to the person." Ala. Code § 25-5-1 (4).

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

A. Traumatic or "single occurrence" claims.

Pursuant to the Act, a covered "injury" or "personal injury" "shall mean only injury by accident arising out of and in the course of the employment." Ala. Code § 25-5-1(9). Further, "accident" is construed to mean "an unexpected or unforeseen event, happening suddenly and violently, with or without human fault, and producing at the time injury to the physical structure of the body or damage to an artificial member of the body by accidental means. Ala. Code § 25-5-1(7).

While Alabama courts and lawmakers have never formulated an all-encompassing definition for "injury to the physical structure of the body," the general consensus is that it may be defined as a change in the physical condition of a human being that produces harm, pain, or functional disability. *See Rich v. Warren Mfg., Inc.*, 634 So. 2d 1015 (Ala. Civ. App. 1994). This injury may include a worsening of a preexisting abnormal physical condition triggered by a work-related accident. Although the Act requires a physical change to invoke its protections, it does not require that the change be verified through objective or scientific means. *Reynolds Metals Co. v. Gray*, 178 So. 2d 87 (Ala. 1965).

The employee must prove his or her claim by a preponderance of evidence. Ala. Code § 25-5-81(c). Even carpal tunnel, if the result of a one-time accident, can be shown by a preponderance of the evidence, rather than clear and convincing evidence. *Ex parte USX Corp.*, 881 So. 2d 437 (Ala. 2003); *but see Millry Mill Co. v. Manuel*, 999 So. 2d 508 (Ala. Civ. App. 2008) (holding that the appropriate standard for gradual deterioration or cumulative stress carpal tunnel syndrome cases is clear and convincing evidence).

B. Occupational disease (including respiratory and repetitive use)

To satisfy the Ala. Code § 25-5-110 definition of an occupational disease, the claimant must establish that the disease resulted from prolonged exposure to normal working conditions. Moreover, the disease will be covered only if caused by hazards: (1) in excess of those ordinarily incidental to employment in general and (2) different in character from those found in the general run of occupations. Lastly, to qualify as occupational, the disease must arise out of and be in the course of employment. *See Harrison v. Marion Regional Nursing Home*, CL-2023-0800, 2024 WL 4311574, at *5 (Ala. Civ. App. Sept. 27, 2024) (dependent of nursing home employee failed to prove by a preponderance of the evidence that employee, who died from COVID-19, contracted the COVID-19 virus in the course of her employment with nursing home).

The employee must prove his or her claim by a preponderance of evidence, except claims involving gradual deterioration or cumulative physical stress disorders which must be proven by clear and convincing evidence. Ala. Code § 25-5-81(c); *Williams v. Union Yarn Mills, Inc.,* 709 So. 2d 71 (Ala. Civ. App. 1998).

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

Claims involving sexual harassment, *Busby v. Truswa*l, 551 So.2d 322 (Ala. 1989), claims where the employee has misrepresented prior injuries after being accepted for employment, Ala. Code § 25-5-51, solely idiopathic factors, *Ex Parte Patton*, 77 So. 3d 591 (Ala. 2011), and preexisting physical weakness or disease, *Id*., are all excluded.

Moreover, injuries caused by the willful misconduct of the employee, including refusal or failure to use safety devices provided by the employer, or by accident due to intoxication or illegal drug use, are also excluded. Ala. Code § 25-5-51.

6. What psychiatric claims or treatments are compensable and is PTSD a compensable diagnosis?

A mental condition resulting solely from nonphysical stimuli does not qualify as an occupational disease under Alabama law. *Cocking v. City of Montgomery*, 48 So. 3d 647 (Ala. Civ. App. 2010). However, the Workers' Compensation Act expressly permits recovery for mental injuries or disorders that arise from an underlying physical injury to the body. *See* Ala. Code § 25-5-1(8).

Workers' compensation claimants who fail to demonstrate a physical injury cannot recover benefits for post-traumatic stress disorder (PTSD). *See Couch v. City of Rainbow City*, 910 So. 2d 772 (Ala. Civ. App. 2004).

7. What are the applicable statutes of limitations?

Under Ala. Code § 25-5-80, an employee who suffers a compensable accidental injury resulting in disability or death has two years from the date of the injury, death, or (where applicable) the date of the accident to file a verified complaint. Similarly, Ala. Code § 25-5-117 provides the same two-year limitations period for claims based on occupational diseases. The statute of limitations is an affirmative defense, which employers waive if they fail to specifically plead. *Ex parte Dan River, Inc.*, 794 So. 2d 386 (Ala. 2000); Ala. R. Civ. P. 8. For latent injuries, a two-year period for filing workers' compensation claim begins to run from the time the party, acting reasonably, should have known of the injury. *Dillard v. Calvary Assembly of God*, 372 So. 3d 551 (Ala. Civ. App. 2022).

For death claims, the statute is two years from the date of death, but in no event may a claim be filed if the death occurs more than three years from the date of the accident. Ala. Code § 25-5-80.

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

Ala. Code § 25-5-78 requires that the employee, or the employee's representative, provides written notice to the employer of a work-related incident within five days of its occurrence. This requirement may be excused if the employee was prevented from giving notice due to physical or mental incapacity (excluding minority), fraud, deceit, or other similarly compelling reasons. However, if notice is not given within 90 days of the incident, compensation is absolutely barred under clause (2) of § 25-5-78. The Act also sets forth a model written notice form in § 25-5-79, reflecting the type of notice the legislature contemplated.

9. Describe available defenses based on employee conduct:

A. Self-inflicted injury.

Under Ala. Code § 25-5-51, self-inflicted injuries are not compensable. Although no reported Alabama case has squarely addressed whether injuries resulting from suicide are compensable, the statute treats intentional self-injury or suicide as a specific defense rather than an automatic bar to recovery. As a result, the burden falls on the employer to plead and prove the facts supporting that defense. *Jackson v. Marshall Lumber Co., Inc.*, 641 So. 2d 288 (Ala. Civ. App. 1994).

B. Willful misconduct, "horseplay", etc.

A deliberate and intentional violation of a reasonable rule or regulation known to the employee constitutes willful misconduct and will bar the employee from recovering workers' compensation for any resulting injuries. *Trannon v. Sloss-Sheffield Steel & Iron Co.*, 171 So. 898 (Ala. 1937). This forfeiture of benefits applies to the willful violation of any employer rule, regardless of whether the rule was specifically intended to protect workers' safety. *Ex parte Woodward Iron Co.*, 102 So. 103 (Ala. 1924).

Injuries incurred during "horseplay" may not be compensable if the "horseplay" constitutes a substantial deviation from the employment. *See Walden v. Glaze & Son, et al*., 616 So. 2d 357 (Ala. Civ. App. 1992) (finding no compensable injury arising out of horseplay incident because employee substantially deviated from employment); *but see Beverly v. Ruth's Chris Steakhouse*, 682 So. 2d 1360 (Ala. Civ. App. 1996) (finding compensable injury when employee is injured in altercation with co-employee while protecting property of employer).

The employer bears the burden of proof for establishing misconduct. Ala. Code § 25-5-36.

C. Intoxication and impairment by illegal drugs.

The Act expressly bars compensation for any injury or death resulting from an accident caused by the employee's intoxication from alcohol or impairment by illegal drugs. *See* Ala. Code § 25-5-51. Because the statute uses the phrase "due to," the employer bears the burden of proving that the employee's intoxication or drug impairment was the proximate cause of the accident or injury. *See Lankford v. Redwing Carriers, Inc.*, 344 So. 2d 515 (Ala. Civ. App. 1977).

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

In *Ex parte Southern Energy Homes, Inc.*, 603 So. 2d 1036 (Ala. 1992), the Alabama Supreme Court held that if an employee knowingly misrepresents a preexisting injury when entering the employment relationship, and the employer relies on that misrepresentation, the employee's claim for workers' compensation benefits may be barred. However, the employer must also establish a causal connection between the misrepresentation and the subsequent injury. The Alabama Supreme Court has held that if such a claim is supported by "clear and convincing proof," a claim for fraud will not be barred by the exclusivity provisions of the Act. *Lowman v. Piedmont Executive Shirt Mfg. Co.*, 547 So. 2d 90 (Ala. 1989).

Additionally, under Ala. Code § 13A-11-124, any intentional misrepresentation related to a workers' compensation claim may constitute a criminal offense. A violation of this statute is classified as a Class C felony, punishable by imprisonment for not less than one year and one day, and not more than ten years.

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

Ala. Code § 25-5-51 allows such a defense. For an employer to successfully defend a claim on that basis it must prove (1) that the employee knowingly and willingly made a false representation about his condition; (2) that the employer relied upon the false representation and his reliance is a substantial factor in the hiring of the employee; and (3) that there is a causal connection between the false representation and the injury. *B.E. & K v. Weaver*, 801 So. 2d 12 (Ala. Civ. App. 2000). Additionally, to deny compensation based upon misrepresentations regarding physical or medical history at the time an employer makes an unconditional offer of employment the employer must provide a written warning in bold type print stating, "Misrepresentations as to preexisting physical or mental conditions may void your workers' compensation benefits." Ala. Code § 25-5-51.

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

When an employer expressly or implicitly requires an employee to participate in an event or activity or pays the employee wages for the time spent participating, that activity is within the course of employment. *Wooten v. Roden*, 71 So. 2d 802 (Ala. 1954) (dicta); *see also Moesch v. Baldwin County Electric Membership Corporation*, 479 So. 2d 1271 (Ala. 1985) (holding that when an employer gave his employee a Christmas ham, the injury she suffered picking up the ham was compensable). However, if the employer simply sponsors or encourages participation without mandating it or compensating employees for their time, courts must look to the surrounding circumstances to determine whether there was implied employer consent and whether the activity provided an economic benefit to the employer. *See Anderson v. Custom Caterers, Inc.*, 185 So. 2d 383 (Ala. 1966).

The Alabama Supreme Court set forth the following standards for determining whether an employee could recover for an injury sustained while attending a party given by his employer: (1) whether the activity is customary; (2) whether the employer subsidized or encouraged the activity; (3) the extent to which the employer directs the activity; (4) the presence of pressure or compulsion upon the employee to attend and participate; or (5) whether the employer expects to receive a benefit from the employee’s participation in the activity. *Anderson v. Custom Caterers, Inc.*, 185 So. 2d 383 (Ala. 1966); *Board of Managers of the City of Birmingham Retirement and Relief System v. Elliott*, 532 So. 2d 1019 (Ala. Civ. App. 1988); *compare St. Paul Insurance Co. v. Harris*, 758 F.2d 1450 (11th Cir. 1985).

13. Are injuries by co-employees compensable?

An employer will typically be liable for an injury to an employee if it is the result of an action by a co-employee (for limited exceptions involving personal ill will, see section 14). However, the injured employee may also pursue a claim against a co-employee who “intentionally” causes the injury. Ala. Code § 25-5-11. One such scenario, which has produced considerable litigation, occurs where the co-employee removes a safety guard. Ala. Code § 25-5-11; *see also Moore v. Reeves*, 589 So. 2d 173 (Ala. 1991).

If an attack on an employee is considered a personal attack unrelated to employment, injuries caused by that attack are not covered by the Workers' Compensation Act. *See Ex parte Drury Hotels Company, LLC*, 303 So. 3d 1188 (Ala. 2020); *see also Patrick v. Mako Lawn Care, Inc.*, 346

So. 3d 1001 (Ala. Civ. App. 2021); *see also Leader v. Pablo*, SC-2022-0736, 2024 WL 3998090, at *1 (Ala. Aug. 30, 2024).

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

"Injury does not include an injury caused by the act of a third person or fellow employee intended to injure the employee because of reasons personal to him or her and not directed against him or her as an employee or because of his or her employment." Ala. Code § 25-5-1(9). However, if circumstances of the assault arise out of the employment, the assault is compensable. *Beverly v. Ruth's Chris Steak House*, 682 So. 2d 1360 (Ala. Civ. App. 1996).

BENEFITS

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

There are three different ways to ascertain average weekly earnings. *See* Ala. § Code 25-5-57(b).

A. Standard 52-Week Calculation

If the employee worked the same job for the same employer during the full 52 weeks before the injury, the sum of the employee's total earnings for that time period is simply divided by 52. However, if the employee missed more than seven consecutive calendar days (not necessarily in the same week), those missed weeks are deducted from the calculation and the earnings are divided by the remaining number of weeks. If the employment lasted less than 52 weeks, the same method applies, but using the actual period worked.

B. Partial Employment or Irregular Work History

If the standard calculation is not fair or feasible due to the short duration of employment or the irregular nature of the work, the law allows for a different method. In these cases, the average weekly wage is based on what a similarly situated employee (same grade and type of job) would have earned during the 52 weeks prior.

C. Discretionary Method (Fairness-Based)

Where neither of the above methods result in a fair and reasonable wage, wages may be averaged across the period worked, using the number of weeks and partial weeks during which the employee earned wages, to produce an equitable result for both employee and employer.

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

Section 25-5-68 provides: The compensation shall be not less than 27 1/2 percent of the average weekly wage of the state. The maximum rates shall be no more than 100 percent of the average weekly wage. Furthermore, the maximum compensation payable for permanent partial disability shall be no more than the lesser of $220.00 per week or 100 percent of the average weekly wage.

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

Unless good cause can be demonstrated, any installment of compensation must be paid within 30 days after it becomes due, or a 15% penalty shall be paid in addition to the installment. Ala. Code § 25-5-59(b).

18. What is the "waiting" or "retroactive" period for temporary benefits (e.g. must be out 21 days before recovering benefits for the first 3 days)?

Usually, compensation is not payable for the first three days of disability. *See* Ala. Code § 25-5-59(a). Compensation begins the fourth day after the disability commences. *See* Ala. Code § 25-5-59(b). However, if the disability ultimately extends to 21 days, compensation for the first three days after the injury shall be added to and payable with the first installment due the employee after the expiration of 21 days. *See* Ala. Code § 25-5-59(b).

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

Temporary total benefits are payable until the employee reaches maximum medical improvement. *Accustar, Inc. v. Staples*, 598 So. 2d 943 (Ala. Civ. App. 1992); *Goodyear Tire & Rubber Co. v. Rich*, 598 So. 2d 923 (Ala. Civ. App. 1992). The employer is required to make a report within 10 days to the Department of Labor on Form WCC-3 and that form must be filed within 10 days following the interruption or suspension of periodic payments. *See* Ala. Admin. Code Rule 480-5-1-.01(2). If payments are resumed, the employer must file another WCC-3 form within 10 days of the date of first payment. *See* Ala. Admin. Code Rule 480-5-1-.01(2).

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

The number of temporary total disability weeks is credited towards the calculation of a "body as a whole" permanent partial disability award. However, no credit is received for temporary total disability weeks paid in the calculation of the number of weeks due for a scheduled member injury. Injuries to the back, shoulder, head, etc. are not deemed scheduled injuries, and calculation of benefits due depends upon loss of ability to earn. Ala. Code §25-5-57(a)(3).

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

When disfigurement is compensable but not resulting from loss of member or other injury specifically enumerated in Ala. Code § 25-5-57(a)(3)(1)-(33), Ala. Code § 25-5-57(a)(3)(34) provides compensation to the employee in the amount of two-thirds of his or her average weekly earnings for such period as the court may determine, not exceeding 100 weeks.

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

Under Ala. Code § 25-5-57(a)(3), the compensation shall be 66 2/3 percent of the average weekly earnings, during the number of weeks set out in the schedule below

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

The weeks awarded for loss of a scheduled member are as follows:

Bodily Part	Maximum Weeks
Thumb	62
Index finger	43
Middle finger	31
Ring finger	22
Little finger	16
Great toe	32
Other toes	11
Bodily Part	**Maximum Weeks**
Hand	170
Arm	222
Foot	139
Leg	200
Eye	124
Bodily Parts	**Maximum Weeks**
Eye and Leg	350
Eye and Hand	325
Eye and Arm	350
Eye and Foot	300

Two Arms	400
Two Hands	400
Two Legs	400
Two Feet	400
One Arm and Other Hand	400
One Hand and One Foot	400
One Leg and Other Foot	400
One Hand and One Leg	400
One Arm and One Foot	400
One Arm and One Leg	400
Loss of Hearing:	**Maximum Weeks**
One ear	53
Both ears	163

Ala. Code § 25-5-57.

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

Up to 300 weeks are available for permanent partial disability (less than 100 percent disability). The compensation shall be 66 2/3 percent of the difference between the average weekly earnings of the worker at the time of the injury and the average weekly earnings he or she is able to earn in his or her partially disabled condition, subject to the maximum weekly compensation. If a permanent partial disability follows a period of temporary total disability resulting from the same injury, the number of weeks of the temporary total disability shall be deducted from the number of weeks payable for the permanent partial disability. Ala. Code § 25-5-57(a)(3)g.

Under amendments made to the Act in 1992, if an employee returns to work making a wage equal to or greater than his pre-injury wage, the employee shall not be entitled to compensation based on vocational disability. Instead, the Court will award the employee compensation based on a physical impairment rating. Ala. Code §25-5-57(a)(3)(i). Under the provision, if the employee should lose his job within 300 weeks of the injury (except for specified reasons) he can petition the Court within 2 years thereof to reconsider his permanent partial disability rating.

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

The employee is required to accept vocational retraining if requested by the employer. The employer is required to provide vocational retraining if suggested in writing by the treating physician and a vocational specialist. Ala. Code § 25-5-77(c).

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

The minimum amount of compensation payable is the lesser of 100% of the average weekly earnings of the employee or 27 1/2% of the average weekly wage of the State. Ala. Code § 25-5-68.

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

A. Funeral expenses.

Reasonable Funeral Expenses are payable up to $6,500.00. Ala. Code § 25-5-67.

B. Death benefits calculation.

The Act recognizes two types of dependency: conclusively dependency presumed from the relationship of the parties and other attenuating circumstance and actual dependency, based on the fact that the claimant regularly derived support from the earnings of the deceased worker at the time of his or her death and for a reasonable period of time immediately prior thereto. Ala. Code § 25-5-61; Ala. Code § 25-5-64.

If there are no dependents, the estate is entitled to a one-time $7,500.00 lump sum payment. Ala. Code § 25-5-60(1)g. If there is one dependent, benefits are payable to that dependent based upon 50% of the employee's average weekly wage. If there are two or more dependents, benefits are payable at two-thirds of the average weekly earnings (subject to maximum and minimum tables). Ala. Code § 25-5-60(1).

C. Dependency benefits duration.

The period of dependency is up to 500 weeks. Ala. § Code 25-5-60(2).

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

Alabama no longer has a Second Injury Trust Fund. Ala. Code § 25-5-71.

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

A claim may not be re-opened because of a worsened condition if settlement has been approved by a judge. A trial judge cannot reserve the issue of “extent of disability” in its decree. *Ex parte Kimberly-Clark Corporation*, 779 So. 2d 178 (Ala. 2000). Settlements may be set aside for fraud, undue influence, or coercion, provided application is made within six months of the settlement.

Ala. Code §25-5-56. An employer may petition a judge to set aside an award of permanent total disability if, as a result of physical or vocational rehabilitation, or otherwise, the employee is able to obtain gainful employment. Ala. Code § 25-5-57(a)(4)h.

Under the return-to-work provision, Ala. Code § 25-5-57(a)(3)(i), if the employee has settled his claim based on a physical impairment and then loses his job (except for certain specified reasons) he can then petition the court within two years thereof for reconsideration of his or her permanent partial disability rating (within 300 weeks from the injury).

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

The statute precludes a plaintiff's attorney's fee without the approval of the judge. Ala. Code § 25-5-90. Attorneys' fees, by statute, are paid from the amount awarded to the employee. The attorney's fee is limited to 15% of the compensation award. The attorney's fees can be awarded in a lump sum, but the amount is deducted from the employee's benefits and calculated in accordance with Ala. Code § 25-5-83; *Ex parte St. Regis Corp*, 535 So. 2d 160 (Ala. 1988).

A trial court can assess an attorney's fee against the employer in a civil contempt proceeding if the actions of the employer evince bad faith. *Argo Const. Co. v. Rich*, 603 So. 2d 1078 (Ala. Civ. App. 1992).

EXCLUSIVITY/TORT IMMUNITY

29. Are there any specific compensability requirements or applicable statutes for hybrid employees?

No.

30. Is the compensation remedy exclusive?

A. Scope of immunity.

The exclusive remedy provision is statutory. Ala. Code § 25-5-53; *see also Crenshaw as next friend of Crenshaw v. Sonic Drive In of Greenville, Inc.*, SC-2024-0081, 2024 WL 4998759, at *3 (Ala. Dec. 6, 2024) (holding Workers' Compensation Act's exclusive-remedy provisions does not violate Alabama Constitution's provision that every injured person has a remedy by due process of law). One interesting recent case from the Court of Civil Appeals held that when an employee was injured during an altercation with a co-worker at the time she was fired, the employee's exclusive remedy is under the Workers' Compensation Act. *Cook v. AFC Enterprises, Inc.*, 826 So. 2d 174 (Ala. Civ. App. 2002). A trial court's denial of a claim of immunity by an employer made pursuant to the exclusive-remedy provisions of the Workers' Compensation Act is reviewable by a petition for writ of mandamus. *Ex parte Standard Furniture Manufacturing Co.*, LLC, 333 So. 3d 139 (Ala. Civ. App. 2021). However, there are exceptions.

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

The exclusive remedy provision may not protect the employer/insurer from the following claims: (1) intentional fraud, *Lowman v. Piedmont Executive Shirt Manufacturing Co.*, 547 So. 2d 90 (Ala. 1989); (2) outrageous conduct, *Continental Casualty Insurance Co. v. McDonald*, 567 So. 2d 1208 (Ala. 1990); *Travelers Indemnity Co. of Illinois v. Griner*, 809 So. 2d 808 (Ala. 2001); (3) retaliatory discharge for filing a workers' compensation claim, Ala. Code § 25-5-11.1; *Coastal Lumber Co. v. Johnson*, 669 So. 2d 803 (Ala. 1995); *Register v. Outdoor Aluminum, Inc.*, 338 So. 3d 741 (Ala. 2021), and (4) sexual harassment, *Busby v. Truswal System Corp.*, 551 So. 2d 322 (Ala. 1989). In addition, co-employees may be subject to claims for willful conduct and for the removal of a safety guard. Ala. Code § 25-5-11; *see also Moore v. Reeves*, 589 So. 2d 173 (Ala. 1991).

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

Those who have control or custody of the employment or place of employment are statutorily required to provide a safe workplace. Ala. Code § 25-1-1(a); *Procter & Gamble Co. v. Staples*, 551 So. 2d 949 (Ala. 1989). Claims against employers for failing to provide a safe workplace should be barred by the exclusivity provisions of the Workers' Compensation Act. Under rare circumstances, co-employees may be subject to direct action for willful and intentional violation of a specific written safety rule. Ala. Code § 25-5-11(c)(4). The state is required to assist an employer in developing a safety program. Ala. Code § 25-5-15.1(c)(4).

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

If the minor was employed in violation of the law, the penalty is compensation of twice the ordinary amount. Ala. Code § 25-5-34.

33. What is the potential exposure for "bad faith" claims handling?

There is no cause of action for "bad faith" handling of claims. *Farley v. CNA Insurance Co.*, 576 So. 2d 158 (Ala. 1991). However, where the employer/insurer has some ulterior motive for denying benefits, a cause of action for "outrageous conduct" might exist. In the past, the Alabama Supreme Court has affirmed jury verdicts for outrageous conduct arising out of workers' compensation matters. *Continental Casualty Ins. Co. v. McDonald*, 567 So. 2d 1208 (Ala. 1990) (insurer held liable for intentional infliction of emotional distress for purposefully withholding benefits in an attempt to coerce acceptance of a small lump sum settlement); *see also Travelers Indemnity Co. of Illinois v. Griner*, 809 So. 2d 808 (Ala. 2001).

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

Termination because of the claim may entitle the employee to a jury trial with compensatory and punitive damages. Ala. Code § 25-5-11.1. The Alabama Supreme Court has clarified the *prima facie* standard for establishing a retaliatory discharge claim, which includes the following elements:

(1) Proof of an employment relationship;
(2) An on-the-job injury;

(3) Notice to the employer of the on-the-job injury;
(4) Subsequent termination of the employment; and
(5) Proof of a causal relationship between the workers' compensation claim and the subsequent discharge.

Alabama Power Company v. Aldridge, 854 So. 2d 554 (Ala. 2002).

THIRD PARTY ACTIONS

35. Can third parties be sued by the employee?

Yes. Such cases must be brought under Ala. Code § 25-5-11.

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

Co-employees may be subject to claims for willful conduct (requires intent to injure) and removal of a safety guard. Ala. Code § 25-5-11; *see Means v. Glover*, 342 So. 3d 539 (Ala. 2021) (holding that a failure to install a safety windshield on the forklift that employee was operating at the time of workplace accident did not constitute willful conduct subjecting co-employees to liability outside the Act); *see also Matter of Leader*, 656 B.R. 459 (Bkrtcy. N.D. Ala. 2023) (allowing tort actions against co-employees when personal injury or death results from co-employee's willful conduct); *see also Moore v. Reeves*, 589 So. 2d 173 (Ala. 1991).

37. Is subrogation available?

The employer/insurer may subrogate for both compensation and medical benefits paid. Ala. Code § 25-5-11(a). Future medical bills and benefits are also subject to subrogation. *Ex parte BE&K Construction Company*, 728 So. 2d 621 (Ala. 1998); *Ex parte Miller & Miller Construction Co., Inc.*, 736 So. 2d 1104 (Ala. 1999). The subrogation amount is subject to reduction for payment of attorney's fees in obtaining the third-party recovery. Ala. Code § 25-5-11(e).

MEDICALS

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

An employee can make claims for medical benefits even if a claim was not filed within the typical two-year statute of limitations period. *Ex parte Tuscaloosa County*, 522 So.2d 782 (Ala. 1988). Under the 1992 amendments, all undisputed medical bills must be paid within 25 working days of receipt of claims, or a 10% penalty can be imposed. Ala. Code § 25-5-77(h).

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

Alabama adjudicates workers' compensation claims in the state judicial system applicable to all civil and criminal actions. Medical information and records may therefore be obtained by ordinary discovery methods. Alternatively, a statutory provision allows either party to obtain the employee's medical records without notice to opposing party. Ala. Code § 25-5-77(b). Medical records can be introduced at trial without a deposition using a statutory procedure for authenticating the records. Ala. Code § 25-5-81(f)(4).

40. What is the rule on (a) Claimant's choice of physician; (b) Employer's right to second opinion and/or Independent Medical Evaluations?

A. Claimant's choice of physician.

The employer has the right to select the initial treating physician. If the employee is dissatisfied with the initial treatment of the physician selected by the employer and if further treatment is required, the employee can select a physician from a panel or list of four physicians selected by the employer. Ala. Code § 25-5-77(a).

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

The employee must submit to examinations by the employer's physician at all reasonable times. The employee has the right to have his or her own doctor present at the examination. Ala. Code § 25-5-77(b).

The court may also on motion or on its own appoint a neutral physician to examine the employee who will report his findings to the court. Ala. Code § 25-5-77(b).

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

Employers shall provide "reasonably necessary" medical care to an employee. Ala. Code § 25-5-77(a). The Court of Civil Appeals has also indicated that to be reasonably "medically necessary," services and supplies need only be "consistent with" the diagnosis and treatment of the illness or injury, "consistent with" the "standard of care for good medical practice," and "have scientifically established medical value." *See Ex parte Southeast Alabama Medical Center*, 835 So. 2d 1042 (Ala. Civ. App. 2002); *see also Ex parte Trusswalk, Inc.*, 282 So. 3d 39 (Ala. Civ. App. 2019).

Certain case law suggests that the employer/insurer may limit referrals if it makes its position known on such issue at an early date. *Transco Energy v. Tyson*, 497 So. 2d 184 (Ala. Civ. App. 1986); *Hudson Industries v. Harrell*, 484 So. 2d 1099 (Ala. Civ. App. 1986).

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

"Crutches, artificial members, and other apparatus" are covered. Ala. Code § 25-5-77. Although a time frame is not specifically stated, employers shall provide "reasonably necessary" medical care to an employee. Ala. Code § 25-5-77(a).

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

While there are only a few cases on point, the general thought is that such expenses will be covered if they are deemed reasonable and necessary. *See Continental Casualty Ins. Co. v. McDonald*, 567 So. 2d 1208 (Ala. 1990). The statute does not require employers to purchase vehicles such as a specially retrofitted van. *Ex parte City of Guntersville*, 728 So. 2d 611 (Ala. 1998) (declining to address the issue of whether an employer would be required to modify a vehicle for an injured employee).

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

Yes. A medical fee schedule governing physicians' charges is available from the Department of Industrial Relations. Ala. Code § 25-5-313. Additionally, a committee establishes rates charged by hospitals and outpatient medical facilities. The Act created a Workers' Compensation Medical Services Board to determine criteria for utilization review and bill screening. Ala. Code § 25-5-311.

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

None in Alabama.

PRACTICE/PROCEDURE

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

A petition for determination of a disputed claim may be filed by either party in the circuit court which would have had jurisdiction over the parties in a tort claim. Typically, this is the county where the accident occurred or the county where the employee lives if the employer does business in that county. Ala. Code § 25-5-81.

47. What is the method of claim adjudication?

A. Administrative level.

An Ombudsman may be used by either party, but both parties must agree to utilization of the ombudsman unless the court orders the parties to mediation. In *Ryan's Family Steakhouse, Inc. v. Kilpatric*, 966 So. 2d 273 (Ala. Civ. App. 2006), a per curiam plurality opinion, the court held that in certain circumstances, a workers' compensation claim may be subjected to arbitration. Ombudsmen do not create a record and serve only to mediate claims. Ala. Code § 25-5-290, *et seq*. This mediation option offers a significant opportunity for a reduction of legal expenses.

B. Trial court.

Alabama provides for initial adjudication of workers' compensation disputes by circuit court judges. These are the same judges that preside over typical civil and criminal matters. Standard rules of evidence and procedure apply in workers' compensation cases, except for levels of proof required (either preponderance of evidence or clear and convincing proof, the latter for repetitive motion claims) and a provision allowing medical records to be introduced without the testimony of the treating physician. Ala. Code § 25-5-81 (f)(4).

C. Appellate.

Any appeals are submitted to the Alabama Court of Civil Appeals, but the aggrieved party must appeal within 42 days after an order or judgment. Petition for Writ of Certiorari to the Alabama Supreme Court may be filed after a decision by the Court of Civil Appeals. *Woodward Iron Co. v. Bradford*, 90 So. 803 (Ala. 1921). There is no presumption of correctness at the Court of Civil Appeals, but decisions may not be reversed if the trial court's decision is supported by substantial evidence. Ala. Code § 25-5-81(e).

48. What are the requirements for stipulations or settlements?

Settlements must be court approved to have binding authority. Ala. Code § 25-5-56. Alternatively, settlements can be approved at a Benefits Review Conference with a state ombudsman. Ala. Code § 25-5-292(b); *Stubbs v. Brookwood Medical Center*, 767 So. 2d 359 (Ala. Civ. App. 2000).

49. Are full and final settlements with closed medicals available?

Full and final settlements are available. The 1992 amendments specifically entitle parties to settle matters involving medical payments and rehabilitation. A trial court (or ombudsman) must still determine that the settlement is in the best interest of the employee. Ala. Code § 25-5-56 (1992 Supp.).

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

Yes, settlements must be approved by the circuit court or a state ombudsman to have binding authority. Ala. Code §§ 25-5-6, 292(b). For ombudsman-approved settlements, each party has the right to have the settlement reviewed by a court of competent jurisdiction at any time within sixty (60) days after the date of the settlement. Ala. Code § 25-5-292(b). However, employers often agree to make full settlement payment within ten (10) days of the settlement in exchange for the employee's waiver of his/her sixty-day review rights.

RISK FINANCE FOR WORKERS' COMPENSATION

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

The Act provides two basic methods of securing workers' compensation liability insurance: private insurance and self-insurance. Ala. Code § 25-5-8(a); Ala. Code § 25-5-8(b).

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

A. For individual entities.

An applicant must have a net worth of $5 million and a current assets/liabilities ratio of 1.0 or better. The employer must provide audited or certified financial reports for the prior three years of operation. There must be a positive net income history as shown in the audit and financial statements. The employer must also provide a copy of the company's annual report, or statement of assets and liabilities to the Department at the end of each fiscal year, as evidence of continued financial ability to self-insure its liability under said Law. There is a $500 application fee. Ala. Admin. Code r. 480-5-2-.02(5)(a).

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

An employer may secure the payment of compensation by insuring and keeping insured its liability in some insurance corporation, association, organization, insurance association, corporation, or association formed of employers and workers or formed by a group of employers to insure the risks under the workers' compensation laws, operating by mutual assessment or otherwise. Ala. Code § 25-5-8(a). Provided that the insurance association, organization, or corporation have a contract and plan of business approved in writing by the Commissioner of the Department of Insurance and have been authorized by the Department of Insurance to transact the business of workers' compensation insurance in Alabama and under the plan. Ala. Code § 25-5-8(a).

53. Are "illegal aliens" entitled to benefits of workers' compensation in light of The Immigration Reform and Control Act of 1986, which indicates that they cannot lawfully enter into an employment contract in the United States, although most state acts include them within definition of "employee"?

Yes. Workers without American citizenship who enter contracts of hire with employers are employees subject to the Act. Ala. Code § 25-5-1(5); *but see* Ala. Code § 31-13-32 (making it a Class C misdemeanor for a person who is an unauthorized alien to knowingly apply for work, solicit work in a public or private place, or perform work as an employee or independent contractor in Alabama).

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

Although there are no specific statutes or case law addressing coverage for such injuries, it is presumed that a terrorist act would be subject to the same principles applicable to injuries by other third parties. See Section 14.

55. 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 known specific state requirements that must be satisfied. Generally, under Medicare regulations (42 C.F.R 411.46), Medicare is secondary payer to the payment of workers' compensation by a workers' compensation carrier or self-insured employer. The obligation to pay medical bills for compensable conditions cannot be shifted to Medicare. Therefore, Medicare has an interest in all lump sum settlements of a workers' compensation matter if at the time of the settlement the employee agrees to close out medical benefits and meets the following criteria:

- The employee is already a Medicare enrollee, in which case there is not a threshold settlement amount; or
- There is a reasonable expectation that the employee will be a Medicare enrollee within 30 months of the settlement, and the settlement amount is greater than $250,000.

If the employee meets the criteria for consideration by Medicare, Medicare must be notified in the event of a settlement. Upon review of the file, Medicare may conclude that the settlement does not meet its criteria, or it may require a Medicare set aside trust for large settlements, or it may require merely a custodial self-administered trust account. (Reference 42 C.F.R 404, 411; 42 U.S.C.A 1395).

56. 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).

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

HIPAA, 45 C.F.R. parts 160-164 and 65 F.R. 82462, provides an exception for workers' compensation claims 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.

In Alabama to obtain medical records through subpoena, one must file a notice of intent fifteen days before the subpoena can be issued. This notice may be sufficient to provide notice to the patient that Protected Health Information is being sought. Ala. Civ. Proc. R. 45. Employers may also move the trial court for entry of a standard HIPAA protective order.

58. What are the provisions for "Independent Contractors"?

Under Alabama law, the general test for determining whether a worker is an employee or an independent contractor is whether the person to whom the worker provides services has reserved the right to control the manner in which those services are performed. *Gordon v. West Weaver Baptist Church*, 777 So. 2d 734 (Ala. Civ. App. 2000). Alabama courts have held that an employment relationship may be inferred from four basic factors: (1) direct evidence which demonstrates a right or exercise of control, (2) the method by which the individual receives payment for his or her services, (3) whether equipment is furnished or not, and (4) whether the individual has the right to terminate. *Hooker Const., Inc. v. Walker*, 825 So. 2d 838 (Ala. Civ. App. 2001).

The language that once appeared in 25-5-50(h) was deleted as of August 1, 2008. This language provided employers engaged in the business of residential construction with the option of opting out of workers' compensation provisions. 25-5-50(a) now states that:

> (a) "This article and Article 2 of this chapter shall not be construed or held to apply to…an employer who regularly employs less than five employees in any one business, other than the business of constructing or assisting on-site in the construction of new single-family, detached residential dwellings…"

Essentially, an employer who regularly employs less than five employees in the business of constructing or assisting on-site in the construction of single-family, detached residential dwellings no longer has an option to opt for exemption from coverage as of August 1, 2008.

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

There are no specific provisions. However, under Alabama case law, such workers may be either classified as loaned workers or joint employees depending upon the facts of the case.

When a general employer loans an employee to a special employer, the special employer becomes an employer only if: (1) the employee has made a contract of hire, express or implied, with the special employer; (2) the work being done is essentially that of the special employer; and (3) the special employer has the right to control the details of the work. Alabama courts recognize that if the above three conditions are met, the special employer may become liable for compensation in the event of a work-related injury. *Rast Const., Inc. v. Peters*, 689 So. 2d 781 (Ala. 1996); *Ex parte Stewart*, 518 So. 2d 118 (Ala. 1987).

Whereas joint employment occurs most commonly when an employee's services are leased or sold to another employer by the employee's original employer and the original employer retains some control over the work performed. Some examples of joint employment are: (1) a truck driver leased to a common carrier by a trucking company, and (2) an employee of a labor broker who is assigned to work for a special employer. *Craig v. Decatur Petroleum Haulers, Inc*, 340 So. 2d 1127 (Ala. Civ. App. 1976); *Rhodes v. Alabama Power Co.*, 599 So. 2d 27 (Ala. 1992). In a joint employment relationship, both employers become liable for compensation. The allocation of liability for joint employers has been specifically addressed in Ala. Code § 25-5-76 which appears to provide for apportionment of compensation awards between joint employers based on each employer's contribution to the employee's wages, unless the employers have contractually agreed otherwise. However, the statute has never been construed, and case law has only shown courts finding joint employers jointly and severally liable for compensation. *Domino's Pizza, Inc. v. Casey*, 611 So. 2d 377 (Ala. Civ. App. 1992); *Street v. North Alabama Conf. For United Methodist Church*, 753 So. 2d 1169 (Ala. Civ. App. 1999).

60. 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?

Ala. Code § 25-5-1(4) states, "In no event shall a common carrier by motor vehicle operating pursuant to a certificate of public convenience and necessity be deemed the 'employer' of a leased-operator or owner-operator of a motor vehicle or vehicles under contract to the common carrier." Thus, where common carriers enter contracts with owners of motor vehicles for the use of those vehicles, the common carrier is not the employer of the leased-operator or owner-operator. *Alaplex Transp., Inc. v. Rossen*, 836 So. 2d 901 (Ala. Civ. App. 2002) (driver injured while operating a truck leased by a common carrier from an owner-operator could not recover benefits under the Act from the common carrier because the legislature "chose ... to maintain the immunity afforded under the Act to common carriers in one particular situation, i.e., where common carriers have entered into contracts with owners of motor vehicles for the use of those vehicles."; *compare Liberty Mutual Insurance Co. v. D & G Trucking, Inc.*, 966 So. 2d 266 (Ala. Civ. App. 2006).

61. What are the "Best Practices" for defending workers' compensation claims and controlling workers' compensation benefits, costs and losses?

Financial exposure to workers' compensation is an expensive and complex challenge for every business. The best means for reducing and eliminating that exposure is a strong and individualized "Best Practices" plan.

Every business must deal with the expense of workers' compensation in its risk management and in dealing with the inevitable claim. The best approach to ameliorating a business exposure is a strong and individualized "Best Practices" plan.

62. 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?

Alabama does not impose any additional state-specific requirements beyond what federal law mandates when it comes to protecting Medicare's interests in workers' compensation settlements. However, parties must still comply with federal requirements under the Medicare Secondary Payer Act. In *Wix Corp. v. Davis*, 945 So. 2d 1040 (Ala. Civ. App. 2005), the court held that parties could not lawfully contract to place the burden of future medical coverage on Medicare for work-related injuries. The court emphasized that Medicare is a secondary payer, not a substitute for an employer or insurer's obligations under Alabama workers' compensation law. This principle mirrors 42 U.S.C. § 1395y(b)(1), which prohibits Medicare from covering medical costs when payment is expected to be made by a workers' compensation plan. Therefore, parties must structure settlements in a way that accounts for and protects Medicare's interests.

63. 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?

See section 62.

64. 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.

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