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Indiana

1. Citation for Indiana Worker's Compensation Statute.

Indiana Worker's Compensation Act, Ind. Code § 22-3-1 *et seq.* (2025).

Worker's Compensation Board of Indiana, 631 Ind. Admin. Code 1-1 *et seq.* (2025).

SCOPE OF COMPENSABILITY

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

The Worker's Compensation Act ("Act") covers all employees who suffer personal injury or an occupational-related disease by accident arising out of and in the course of employment. Employees mean every person, including minors, in the service of another, under any contract of hire or apprenticeship, written or implied, except one whose employment is both casual and not in the course of trade, business, occupation, or profession of the employer. I.C. § 22-3-6-1.

An executive officer appointed or elected, other than that of a municipal corporation, governmental subdivision, charitable, religious, educational or other nonprofit corporation is also considered an employee. *Id.* An officer of a corporations who is an employee or is an owner of any interest in the corporation may elect to be excluded from coverage under the Act. The Act requires written notice of election served on the insurance carrier and Worker's Compensation Board (Board). By contrast, an executive officer of a municipal corporation, governmental subdivision, charitable, religious, educational or other nonprofit corporation may elect to be covered by including the executive officer in the contract of insurance. *Id.*

An owner of a sole proprietorship may elect to be covered as an employee if the owner is actually engaged in the proprietorship business. *Id.* Likewise, a partner in a partnership, and a member or manager in a limited liability company, may elect to be covered if the partner, member or manager is engaged in the business of the partnership or limited liability company. *Id.* The Act requires written notice of election in each of these scenarios.

The Act does not apply to railroad employees engaged in the train service as: 1) engineers, 2) firemen, 3) conductors, 4) brakemen, 5) flagmen, 6) baggage men, and 7) foremen in charge of yard engines and helpers. I.C. § 22-3-2-2. The Act does not apply to the employees of a fire department, police department of any municipality who partake in a firefighter's or police officer's pension fund (except if the common council elects medical benefits for its employees). *Id.* The Act does not cover for persons who enter into an independent contractor agreement with a nonprofit organization. *Id.* The Act does not apply to casual laborers, farm or agricultural employees, and household employees. I.C. § 22-3-2-9. Real estate professionals are not employees under the Act if: (1) they are licensed real estate agents; (2) substantially all their remuneration is directly related to sales volumes and not the numbers worked; and (3) there is a written agreement with the real estate brokers indicating that they are not to be treated as employees for tax purposes. I.C. § 22-3-6. An independent contractor, as classified under the guidelines of the United States Internal Revenue Code, is not considered an employee under the Act. *Id.* Additionally, an "owner-operator" that provides a motor vehicle and the services of a driver under a written contract that is subject to federal transportation regulations is not an employee of the motor carrier for purposes of the Act. *Id.* A driver providing drive away operations is an independent contractor and not an employee when the vehicle being driven is the commodity being delivered; and the driver has entered into an agreement with the party arranging for the transportation that specifies the driver is an independent contractor and not an employee. *Id.*

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

"Employer" includes the state and any political subdivision, any municipal corporation within the state, any individual or the legal representative of a deceased individual, firm, association, limited liability company, limited liability partnership, or corporation or the receiver or trustee of the same, using the services of another for pay. I.C. § 22-3-6-1(a). Additionally, lessors and lessees of employees are considered joint employers. *Id.*

A corporation, limited liability company, or limited liability partnership that controls the activities of another corporation, limited liability company, or limited liability partnership, or a corporation and a limited liability company or a corporation and a limited liability partnership that are commonly owned entities, or the controlled corporation, limited liability company, limited liability partnership, or commonly owned entities, and a parent corporation and its subsidiaries shall each be considered joint employers of the corporation's, the controlled corporation's, the limited liability company's, the limited

liability partnership's, the commonly owned entities', the parent's, or the subsidiaries' employees. *Id.* Recently, the Indiana court of appeals upheld a trial court's dismissal of an employee's suit against a subsidiary, finding that the Act included "all tiered subsidiaries" in the definition of employer. *England v. Siebe*, 249 N.E.3d 619 (Ind. Ct. App. 2024), *trans. denied, cert. denied*. In that case, England worked for FedEx Express Corporation, a 100% owned subsidiary of FedEx Corporation. She was injured when Siebe, an employee of FedEx Freight, Inc., backed a tractor-trailer into her. FedEx Freight, Inc. is also a 100% owned subsidiary of FedEx Corporation. The court held that because both FedEx Express and FedEx Freight were joint employers under the Act, England's civil action was barred by the exclusive remedies provision of the Act.

If the employer is insured, the term includes the employer's insurer so far as applicable. However, the inclusion of an employer's insurer within this definition does not allow an employer's insurer to avoid payment for services rendered to an employee with the approval of the employer. I.C. § 22-3-6-1.

Although not included within the definition of "employer," the state, any political division thereof, any municipal corporation, any corporation, limited liability company, partnership, or person may have the same liability as an employer for the payment of worker's compensation benefits to an injured worker of a contractor who is subject to the compensation provisions of the Act, if the entity fails to exact a certificate from the contractor showing that it has complied with the insurance requirements under the Act, and where the contract involves the performance of any work exceeding one thousand dollars ($1,000) in value by the contractor. I.C. § 22-3-2-14.

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

The Worker's Compensation Act covers injury or death by accident arising out of an in the course of the worker's employment. I.C. § 22-3-2-2. The Act also covers disablement or death by occupational disease arising out of and in the course of the employment. I.C. § 22-3-7-2. The burden of proof is on the employee. I.C. § 22-3-2-2; I.C. § 22-3-7-2. Establishment of one element of a claim does not create a presumption in favor of another element of a claim. *Id.*

The statutory phrase "injury or death by accident" means "unexpected injury or death" and does not require an unusual event precipitating the death. *Evans v. Yankeetown Dock Corp.*, 491 N.E.2d 969, 975 (Ind. 1986).

An accident occurs "in the course of employment" when it takes place within the period of employment, at a place where the employee may reasonably be, and while the employee is fulfilling the duties of employment or while engaged in doing something incidental thereto. *Outlaw v. Erbrich Prods. Co., Inc.*, 742 N.E.2d 526, 530 (Ind. Ct. App. 2001); *Tanglewood Trace v. Long*, 715 N.E.2d 410, 413 (Ind. Ct. App. 1999), *trans. denied*.

An injury "arises out of" employment when a causal nexus exists between the injury sustained and the duties or services performed by the injured employee. *Outlaw*, 742 N.E.2d at 530; *Wine-Settergren v. Lamey*, 716 N.E.2d 381, 389 (Ind. 1999) (citing *Gordon v. Chrysler Motor Corp.*, 585 N.E.2d 1362, 1365 (Ind. Ct. App. 1992)); *Indiana Mich. Power Co. v. Roush*, 706 N.E.2d 1110, 1113 (Ind. Ct. App. 1999), *trans. denied*. This nexus is established when a reasonably prudent person considers the injury to be born out of a risk incidental to the employment, or when the facts indicate a connection between the injury and the circumstances under which the employment occurs. *Id.*; *Blaw-Knox Foundry & Mill Mach., Inc. v. Dacus*, 505 N.E.2d 101, 102–103 (Ind. Ct. App. 1987).

When analyzing whether a risk is incidental to employment, risks are classified into three categories: (1) risks distinctly associated with employment, (2) risks personal to the claimant, and (3) neutral risks, which have no particular employment or personal character. *Roush*, 706 N.E.2d at 1113, *trans. denied* (citing *Rogers v. Bethlehem Steel Corp.*, 655 N.E.2d 73, 75 (Ind. Ct. App. 1995); 1 ARTHUR LARSON & LEX K. LARSON, LARSON'S WORKERS' COMPENSATION LAW 4–1 (2002)).

Risks in the first category are those that are intuitively thought of as work connected. *Milledge v. Oaks*, 784 N.E.2d 926, 930 (Ind. 2003). They include "[a]ll the things that can go wrong around a modern factory, mill, mine, transportation system, or construction project . . . and constitute the bulk of what not only the public but perhaps also the original drafters of compensation acts had in mind as their proper concern." *Id.* (citing LARSON, supra note 7, at § 4.01, at 4–1 to 4–2). Any injuries caused by risks distinctly associated with employment result from conditions inherent in the work environment. *Id.*

Risks that are personal to the claimant include preexisting illness or medical conditions. *Id.*; *Kovatch v. A.M. Gen.*, 679 N.E.2d 940, 943 (Ind. Ct. App. 1997). Courts in Indiana have declined to extend the category of personal risks to personal traits like clumsiness or lack of coordination where those traits are unrelated to an illness or medical condition. *See, e.g., Metropolitan Sch. Dist. of Lawrence Twp. v. Carter*, 803 N.E.2d 695, 699 (Ind. Ct. App. 2004) (finding injuries to an employee who admittedly tripped over her own two feet were not due to a risk personal to the claimant). Although it would appear that Indiana courts have generally limited personal risks to preexisting illnesses or medical conditions, there are exceptions, such an injury that arises from a personal dispute. *See e.g., Conway ex rel. Conway v. School City of E. Chicago*, 734 N.E.2d 594 (Ind. Ct. App. 2000) (finding that an employee, who was fatally shot by a coworker, did not sustain an injury that arose out of employment but rather from personal conflict unrelated to work); *Peavler v. Mitchell & Scott Mach. Co.*, 638 N.E.2d 879, 881 (Ind. Ct. App, 1994), *trans. denied* (finding that personal animosity or disputes that culminate in an assault on the employee is imported into the workplace from the claimant's domestic or private life and cannot be said to arise out of the employment under any circumstances).

Risks that are neutral include those for which there is no causal explanation. *Kovatch*, 679 N.E.2d at 943 (citing Larson, supra note 7, § 1031(a) at 3-104). In the context of workplace falls, the court in *Kovatch v. A.M. General* noted that very few falls are truly unexplained. As long as the evidence supports a reasonable inference that the fall was the result of a personal or idiopathic condition, the fall should not be categorized as unexplained. *Id*. at 943 n.4 (citing Larson, supra note 7, at § 10.31(b) at 3-116 to 3-117). Despite this holding, many accidents are determined to be caused by unexplained circumstances, often reaching that result after eliminating the other two categories of risk. *See e.g., A Plus Home Health Care, Inc. v. Miecznikowski*, 983 N.E.2d 140, 144 (Ind. Ct. App. 2012) (finding that a traveling nurse who testified that her injuries were not the result of a mental illness or condition and additionally stated that her injuries were the result of her losing her footing were the result of a neutral risk and therefore, compensable).

Risks that are distinctly associated with employment and neutral risks are generally deemed compensable under the Indiana Worker's Compensation Act, whereas risks personal to the claimant are not. *Milledge v. Oaks*, 784 N.E.2d 926, 929 (Ind. 2003) (citing *Kovatch*, 679 N.E.2d at 943).

A. Traumatic or "single occurrence" claims.

The Indiana Worker's Compensation Act covers injuries caused from a single traumatic event as well as injuries that are cumulative in nature. For example, in *Four Star Fabricators v. Barrett*, 638 N.E.2d 792, 794 (Ind. Ct. App. 1994), an employee's disc herniation was compensable where the court found the employee's job required him to lift and maneuver heavy steel items on a regular basis. The Act did not require that an injury be attributable to a discrete and identifiable date, time or event.

B. Occupational disease.

The Worker's Compensation Act covers disablement or death by occupational disease arising out of and in the course of the employment. I.C. § 22-3-7-2. "Disablement" means the event of becoming disabled from earning full wages at the work in which the employee was engaged when last exposed to the hazards of the occupational disease by the employer from whom the employee claims compensation or equal wages in other suitable employment, and "disability" means the state of being so incapacitated. I.C. § 22-3-7-9. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where such disease follows as an incident of an occupational disease. I.C. § 22-3-7-2.

The claimant must show that the disease arose out of and in the course of the employment. A disease arises out of employment only if it is apparent to the rational mind that:

(1) There is a direct causal connection between the conditions under which the work is performed and the occupational disease;

(2) The disease followed as a natural incident of the work as a result of some exposure;

(3) The employment is the proximate cause of the disease;

(4) The hazard is not equally accessible outside the employment;

(5) The disease is incidental to the character of the business;

(6) The disease had its origin in a risk connected with the employment; and

(7) The disease flowed from that risk as a rational consequence.

Id.

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

There are no specific injuries or claims that are excluded from the Act. However, no compensation is allowed for an injury or death due to the employee's knowingly self-inflicted injury, their intoxication, their commission of an offense, their knowing failure to use a safety appliance, their knowing failure to obey a reasonable written or printed rule of the employer which has been posted in a conspicuous position in the place of work, or their knowing failure to perform any statutory duty. I.C. § 22-3-2-8. The burden of proof is on the defendant to establish these affirmative defenses.

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

"Whether the injury is mental or physical, the determinative standard should be the same." *Hansen v. Von Duprin, Inc.,* 507 N.E.2d 573, 576 (Ind. 1987). Accordingly, if the mental injury arose out of and in the course of employment, it is compensable. *Id.; Rayford v. Lumbermen's Mutual*, 840 F. Supp. 606 (N.D. Ind. 1993). *aff'd,* 44 F.3d 546 (7th Cir. 1995). In *Hansen,* the court found compensable a mental injury without any accompanying physical injury and rejected any requirement that the mental injury be the result of some unusual stress in the employee's employment. *Id.* at 576-77. In *Indiana State Police v. Wiessing*, the Indiana Court of Appeals upheld the Worker's Compensation Board's determination that an officer's death was the result of post-traumatic stress disorder that resulted when Wiessing shot and killed a motorist who tried to take his gun. 836 N.E.2d 1038, 1046 (Ind. Ct. App. 2005). The court reasoned that because Trooper Wiessing's suicide resulted from this condition, it is not considered to be a self-inflicted injury, but rather an injury due to mental trauma that arose out of the officer's course of employment.

Id. Authorized treatment under the Act for mental health injury or psychological injuries can include psychological counseling.

7. What are the applicable statutes of limitations?

A. Workers' compensation cases.

The right to compensation under IC 22-3-2 through IC 22-3-6 shall be forever barred unless within two (2) years after the occurrence of the accident, or if death results therefrom, within two (2) years after such death, a claim for compensation thereunder shall be filed with the Worker's Compensation Board. If an employee has received compensation for temporary total disability or temporary partial disability, then the two (2) year limitation period to file an Application for Adjustment of Claim begins to run on the last date for which the compensation was paid. I.C. § 22-3-3-3.

In all cases wherein an accident or death results from the exposure to radiation, a claim for compensation shall be filed within two (2) years from the date on which the employee had knowledge of his injury or by exercise of reasonable diligence should have known of the existence of such injury and its causal relationship to his employment.

For progressive types of injuries, with no clear-cut accident date, the statute begins to run when the permanence of the injury is discernible. *Union City Body Co., Inc. v. Lambdin*, 569 N.E.2d 373 (Ind. Ct. App. 1991).

The power and jurisdiction of the Worker's Compensation Board over each case is continuing and from time to time it may, upon its own motion or upon the application of either party, on account of a change in conditions, make such modification or change in the award ending, lessening, continuing, or extending the payments previously awarded, either by agreement or upon hearing, as it may deem just, subject to the maximum and minimum provided for in the Act. The Board shall not make any such modification upon its own motion nor shall any application therefor be filed by either party after the expiration of two (2) years from the last day for which compensation was paid. I.C. § 22-3-3-27.

No limitation of time provided in the Act shall run against any person who is mentally incompetent or a minor so long as the person has no guardian or trustee.

Indiana courts recently addressed two cases involving statute of limitations defenses. In *Sharp v. Armstrong Relocation*, 210 N.E.3d 849 (Ind. Ct. App 2023), the court of appeals affirmed the Board's dismissal of an Application for Adjustment of Claim that was not filed within two (2) years of the occurrence of the accident. in that case, the injured worker was an Indiana resident working for a Kentucky company. The injured worker pursued Kentucky worker's compensation benefits after being injured in a car accident that occurred in December 2018. In 2021, while still receiving disability benefits under Kentucky worker's

compensation law, the injured worker filed an Application for Adjustment of Claim in Indiana. The Board dismissed the injured worker's Application, finding that it was not timely filed under I.C. § 22-3-3-3. The injured worker argued that his claim was timely filed under I.C. § 22-3-3-27 which gave the Board continuing jurisdiction to modify an award due to a change in conditions within two years of the last date for which compensation was paid. The Board and court found I.C. § 22-3-3-27 did not apply because there was no existing award in Indiana for the Board to modify. Note, this case was decided under a previous version of I.C. § 22-3-3-3, which did not extend the statute of limitations for injured workers receiving temporary total disability.

In Santos v. Franciscan Health, 216 N.E.3d 449 (Ind. Ct. App. 2023), *trans. denied*, the court addressed whether an Application for Adjustment of Claim was timely filed where the employee's deadline to file an Application for Adjustment of Claim fell on a Sunday. The injured worker filed her Application the next business day. The Board dismissed the filing as untimely but the court of appeals reversed. The court found the Worker's Compensation Act was silent regarding the method and calculations for filing. The court of appeals applied Trial Rule 6, which extended the time period to file a claim until the end of the next day that was not a Saturday, a Sunday, a legal holiday, or a day on which the office is closed. *Id.* at 455.

B. Occupational disease claims.

No compensation shall be payable for or on account of any occupational diseases unless disablement, occurs within two (2) years after the last day of the last exposure to the hazards of the disease. I.C. § 22-3-7-9. Exceptions exist for occupational diseases caused by the inhalation of silica dust or coal dust, radiation and asbestos exposure. In all cases of occupational diseases caused by the inhalation of silica dust or coal dust, no compensation shall be payable unless disablement occurs within three (3) years after the last day of the last exposure to the hazards of the disease. *Id.* In all cases of occupational disease caused by the exposure to radiation, no compensation shall be payable unless disablement occurs within two (2) years from the date on which the employee had knowledge of the nature of the employee's occupational disease or, by exercise of reasonable diligence, should have known of the existence of such disease and its causal relationship to the employee's employment. *Id.* In all cases of occupational diseases caused by the inhalation of asbestos dust, if the last exposure occurred before July 1, 1985, disablement must occur within three (3) years of the last day of the last exposure to the hazards of the disease. If the last exposure to the hazards of asbestos-related disease occurred on or after July 1, 1985, and before July 1, 1988, disablement must occur within twenty (20) years after the last day of the last exposure. If the last exposure to the hazards of asbestos-related disease occurred on or after July 1, 1988, disablement must occur within thirty-five (35) years after the last day of the last exposure.

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

If the employer does not have actual knowledge of an injury or death, the employee or his dependents must give written notice as soon as practicable. I.C. § 22-3-3-1. Unless such notice is given or knowledge acquired within thirty (30) days from the date of injury, no compensation shall be paid until the date such notice or knowledge is obtained. *Id.* However, lack of notice is not a bar to compensation unless the employer has been prejudiced by the lack of notice, and then only to the extent of such prejudice. *Id.*

Within seven (7) days after the occurrence or knowledge of any injury – either actual, alleged, or reported under I.C. 22-3-3-1 – that causes an employee's death or the need for medical care beyond first aid, the employer must mail – or submit electronically– a report to the employer's insurance carrier. I.C. 22-3-4-13. If an employer is self-insured, this notice must be delivered to the Board. The insurance carrier, companies without insurance, and third-party administrators that report accident information to the Board must report the information via the Electronic Data Interchange (EDI), which results in the creation of the First Report of Injury form (State Form 34401). I.C. 22-3-4-13(b). The First Report of Injury must be delivered to the Worker's Compensation Board the later of seven (7) days after receipt of the report from the employer or fourteen (14) days after the employer's knowledge of the injury. I.C. 22-3-4-13(a).

Electronic Data Interchange (EDI) is a process which allows one company to send information to another company electronically rather than with paper. For a list of forms, including those required to be submitted electronically via an approved EDI 3.1 process such as the First Report of Injury or Subsequent Report of Injury, see: https://www.in.gov/wcb/forms/

9. Describe available defenses based on employee's conduct:

Available affirmative defenses are set forth in I.C. § 22-3-2-8: (a) employee's intoxication; (b) employee's knowingly self-inflicted injury; (c) employee's commission of an offense; (d) employee's failure to use a safety appliance; (e) employee's failure to obey a reasonable written or printed rule of the employer which has been posted in a conspicuous place; or (f) employee's failure to perform any statutory duty. However, a claimant's own mere negligence will not preclude an employee from receiving worker's compensation benefits.

Additionally, a worker injured while actively participating in horseplay is not entitled to compensation, unless he was an innocent victim. *Neidige v. Cracker Barrel,* 719 N.E.2d 441 (Ind. Ct. App. 1999); *Pepka Spring Co. v. Jones*, 371 N.E.2d 389 (Ind. Ct. App. 1978); Weldy *v. Kline,* 616 N.E.2d 398 (Ind. Ct. App. 1993).

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

There are no statutory penalties within the Act relating to claims involving fraud. The Worker's Compensation Board does, however, have the power in the case of fraud to vacate its approval of a compensation agreement, and to entertain an application for that purpose when made by the employee, employer or insurance carrier. *Indiana University Hospitals v. Carter*, 456 N.E.2d 1051 (Ind. Ct. App. 1983). At the same time, a party to a worker's compensation agreement can challenge the validity of the agreement in an independent tort action for fraud. *Id.*

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

Research has found no Indiana cases on this topic.

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

Where there is a clear nexus between work activities and after-hours recreational activities sponsored by the employer, injuries incurred in recreational activities arise out of and in the course of employment. *Ski World, Inc. v. Fife,* 489 N.E.2d 72 (Ind. Ct. App. 1986); *Weldy v. Kline*, 616 N.E.2d 398 (Ind. Ct. App. 1993). Where an employer's interests in sponsoring after-hours activities are not merely altruistic, but also intended to improve business, the activity will likely be considered incidental to employment. *Knoy v. Cary*, 813 N.E.2d 1170, 1173 (Ind. 2004). *See also Curry v. D.A.L.L. Anointed, Inc.*, 966 N.E.2d 91 (Ind. Ct. App. 2012).

13. Are injuries by co-employees compensable?

Yes, injuries by co-employees are compensable when the injuries arise out of the course of employment. *Nelson v. Denkins*, 598 N.E.2d 558 (Ind. Ct. App. 1992) (co-worker pushed worker after co-worker told worker to get back to work); *Skinner v. Martin*, 455 N.E.2d 1168 (Ind. Ct. App. 1983) (Workers' Compensation Act should be liberally construed to include employment-related assaults as compensable accidents).

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

Where an injury by a third party is one which might be reasonably anticipated because of the general character of the work, or the particular duties imposed upon the workman (i.e., salesman who carried money and was shot and robbed, or a night watchman killed by

intruders) such injuries or death may be found to arise out of the employment. *Wayne Adams Buick, Inc. v. Ference*, 421 N.E.2d 733 (Ind. Ct. App. 1981); The court in *K-Mart Corp. v. Novak,* 521 N.E.2d 1346 (Ind. Ct. App. 1988), even went so far as to hold that a store employee's death as a result of a shooting spree by a third party arose out of her employment because her job exposed her to a higher risk of encountering dangerous people.

However, when the animosity or dispute that culminates in an assault on the employee is imported into the workplace from the claimant's domestic or private life, and is not exacerbated by the employment, the assault cannot be said to arise out of the employment under any circumstances. *Peavler v. Mitchell & Scott Machine Co.*, 638 N.E.2d 879, 881 (Ind. Ct. App. 1994), *trans. denied. See also, Conway ex rel. Conway v. School City of E. Chicago*, 734 N.E.2d 594 (Ind. Ct. App. 2000) (finding that an employee, who was fatally shot by a coworker, did not sustain an injury that arose out of employment but rather from personal conflict unrelated to work).

BENEFITS

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

The average weekly wage is the earnings of an injured employee in the employment in which the employee was working at the time of the injury during the period of fifty-two (52) weeks immediately preceding the date of injury, divided by fifty-two (52), except as follows:

A. If the employee lost seven (7) or more calendar days during this period, then the earnings for the remainder of the fifty-two (52) weeks shall be divided by the number of weeks remaining after the time lost has been deducted;

B. Where employment prior to injury was less than fifty-two (52) weeks, the method of dividing the earnings during that period by the number of weeks which the employee earned wages shall be followed if the results just and fair to both parties will be obtained;

C. Allowances made to an employee in lieu of wages as part of a wage contract are deemed part of his earnings; and

D. For a student employee, the average weekly wage is calculated by multiplying the student employee's hourly wage rate by forty (40) hours.

I.C. § 22-3-6-1(d).

There are maximum and minimum average weekly wage limitations. *Id.* The following chart delineates the maximum and minimum average weekly wages based on the date of injury:

	Weekly Wages		
Date of injury	Max AWW allowed	Max TTD Benefit Rate	Min AWW
7/1/09 - 6/30/14	$975.00	$650.00	$75.00
7/1/14 - 6/30/15	$1,040.00	$693.33	$75.00
7/1/15 - 6/30/16	$1,105.00	$736.67	$75.00
7/1/16 - 6/30/17	$1,170.00	$780.00	$75.00
7/1/17 - 6/30/18	$1,170.00	$780.00	$75.00
7/1/18 - 6/30/19	$1,170.00	$780.00	$75.00
7/1/19 - 6/30/23	$1,170.00	$780.00	$75.00
7/1/23 - 6/30/24	$1,205.00	$804.00	$75.00
7/1/24 - 6/30/25	$1,241.00	$828.00	$75.00
7/1/25 - 6/30/26	$1,278.00	$852.00	$75.00
7/1/26 - 6/30/27	$1,316.00	$878.00	$75.00

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

Temporary total disability benefits are equal to sixty-six and two-thirds percent (66⅔%) of his average weekly wages, not to exceed 500 weeks. I.C. § 22-3-3-8.

With respect to injuries causing temporary partial disability for work, temporary partial disability benefits are payable in an amount equal to sixty-six and two-thirds per cent (66 ⅔%) of the difference between his average weekly wages and the weekly wages at which he is actually employed after the injury, for a period not to exceed three hundred (300) weeks. In case the partial disability begins after the period of temporary total disability, the latter period shall be included as a part of the maximum period allowed for partial disability.

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

The first weekly installment of compensation for temporary disability is due fourteen (14) days after the disability begins. I.C. § 22-3-3-7(b). The employer must file a proposed Agreements to Compensation electronically via Electronic Data Interchange (State Form 1043) and serve it on the employee or the employee's dependents within 15 days of the date the first installment of compensation is due. *Id.*

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

Compensation for temporary benefits is to begin on the eighth (8th) day. I.C. § 22-3-3-7(a). If the disability continues for longer than twenty-one (21) days, then compensation for the first seven (7) days is paid. *Id.*

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

Once begun, temporary benefits may not be terminated by the employer unless:

A. The employee has returned to any employment;
B. The employee has died;
C. The employee has refused to undergo a medical examination;
D. The employee has received five hundred (500) weeks of benefits or has been paid the maximum compensation allowed; or
E. The employee is unable or unavailable to work for reasons unrelated to the compensable injury.

I.C. § 22-3-3-7.

In each instance, the employer must provide written notice to the injured worker on a form approved by the Board. *Id.* In all other cases (such as the stoppage of benefits after maximum medical improvement), the employer must notify the employee in writing of the employer's intent to terminate the payment of temporary total disability benefits and of the availability of employment, if any, on a form approved by the Board. *Id.*

Notice of Termination of temporary total disability benefits is filed via EDI, which results in the creation of a Report of Termination of Benefits/Request for IME (form 38911). This form must also be served on the injured worker. If the employee disagrees with the proposed termination, the employee must give written notice of disagreement to the Worker's Compensation Board and the employer with seven (7) days after the notice of intent to terminate benefits. *Id.* Notice of disagreement and a request for a Board-appointed IME can be made by attorneys for injured workers via the Attorney Portal.

If the Worker's Compensation Board and the employer do not receive a notice of disagreement under this section, the employee's temporary total disability benefits shall be terminated. *Id.* Upon receipt of the notice of disagreement, the Worker's Compensation Board shall immediately contact the parties, which may be by telephone or other means, and attempt to resolve the disagreement. *Id.* If the Worker's Compensation Board is unable to resolve the disagreement within ten (10) days of receipt of the notice of disagreement,

the Worker's Compensation Board shall immediately arrange for an evaluation of the employee by an independent medical examiner. *Id.* The independent medical examiner shall be selected by mutual agreement of the parties or, if the parties are unable to agree, appointed by the Worker's Compensation Board. *Id.*

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

Yes, in some cases. Indiana does not recognize compensation for permanent partial disability, but an employer may be entitled to a dollar-for-dollar credit against permanent partial impairment benefits owed for temporary benefits paid beyond the number of weeks (currently 125) set out in I.C. § 22-3-3-10. Additionally, compensation for permanent partial impairment may be reduced by any overpayment of temporary total disability benefits. I.C. § 22-3-3-7(g).

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

In all cases of permanent disfigurement which may impair the future usefulness or opportunities of the employee, the employee shall receive compensation, at the discretion of the Worker's Compensation Board, not exceeding forty (40) degrees of permanent impairment, to be paid weekly at a rate of sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wages. I.C. § 22-3-3-10(i)(15).

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

The Indiana Worker's Compensation Act does not provide compensation for permanent partial disability. However, the Act provides compensation for permanent partial impairment. "Disability" means and refers to an inability to work, whereas "impairment" means and refers to a loss of physical function. *White v. Woolery Stone Co.*, 181 Ind. App. 532, 396 N.E.2d 137, 1979 Ind. App. LEXIS 1366 (Ind. Ct. App. 1979).

Permanent partial impairment is typically assessed by the attending physician once the injured worker has reached maximum medical improvement, but the Board has discretion to determine the amount of permanent partial impairment.

An injured worker receives compensation for permanent partial impairment based on the number of degrees of impairment. The amount of compensation is calculated based on the date of injury. Compensation for permanent partial impairment can be paid as a weekly benefit equal to 66 2/3% of the employee's average weekly wage. The following chart identifies the amount of compensation an injured worker receives per degree of

impairment.

PPI Values –Amount payable per degree of (whole person) impairment				
Date of injury	1-10 Degrees	11-35 Degrees	36-50 Degrees	51-100 Degrees
7/1/16 - 6/30/19	$1,750.00	$1,952.00	$3,186.00	$4,060.00
7/1/19 - 6/30/23	$1,750.00	$1,952.00	$3,186.00	$4,060.00
7/1/23 - 6/30/24	$1,803.00	$2,011.00	$3282.00	$4182.00
7/1/24 - 6/30/25	$1,857.00	$2,071.00	$3380.00	$4307.00
7/1/25 - 6/30/26	$1,913.00	$2,133.00	$3481.00	$4436.00
7/1/26 - 6/30/27	$1,970.00	$2,197.00	$3585.00	$4569.00

I.C. § 22-3-3-10.5, requires worker's compensation carrier or compensation claims administrators to tender a proposed Agreement to Compensation (form 1043), the associated physician's statement, the employee's waiver of examination, and a hand/foot chart (if necessary) to the employee no later than fifteen (15) days after the date of the physician's statement. I.C. § 22-3-3-10.5(a). The employee signed PPI agreement – along with the supporting documentation listed *supra* – must be submitted to the Worker's Compensation Board within fifteen (15) days after receiving it from the employee. I.C. § 22-3-3-10.5(b). Thirty (30) days after the Worker's Compensations Board's approval of the PPI, either the first weekly installment of PPI compensation, or the lump sum amount, must be paid. I.C. § 22-3-3-10.5(c).

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

The Worker's Compensation Act schedules permanent partial impairment of some body parts. Where an injury is not scheduled, compensation for permanent partial impairment is paid based on impairment to the whole person. The chart below identifies the compensation value in degrees for specific body parts. Compensation is calculated by multiplying the value in degrees by the permanent partial impairment rating assigned to arrive at the whole person impairment value (in degrees), which is then compensated based on the values in the chart in the preceding section.

Body Part	Degrees
Thumb	12
Index Finger	8
Second Finger	7
Third Finger	6
Fourth Finger	4
Hand	40
Arm & Wrist	50

Great Toe	12
Second Toe	6
Third Toe	4
Fourth Toe	3
Fifth Toe	2
Foot/Ankle	35
Knee & Leg	45
Whole body	100
Both hands, both feet, total loss of sight in both eyes, or two such losses in the same accident	100
Loss of field of vision	100
Enucleation of eye (considered amputation)	35
Complete Loss of Hearing in 1 ear	15
Complete Loss of hearing in both ears	40
Loss of 1 Testicle	10
Loss of both Testicles	30

For loss by separation of any digit of the hand, hand or arm, toe of the foot, or foot or leg, the compensation values per degree are doubled. I.C. § 22-3-3-10.

The Worker's Compensation Board considers impairment to the shoulder or hip to be whole person impairments.

The following are examples of the calculations of PPI awards under the "degree" system:

Example 1:

For an injury that occurred on January 27, 2019, the doctor has given a PPI rating of 6% of the knee for loss of use.

6% x 45 degrees (for loss of use of the entire leg) = 2.7 degrees
2.7 degrees x $1,750 per degree = $4,725

Example 2:

For a shoulder injury that occurred on June 19, 2024, the doctor has assigned a PPI rating 18% of the upper extremity, which equates to 11% of the whole person under the AMA Guides. The whole impairment is used.

11% x 100 degrees = 11 degrees

10 x $1,803 per degree for degrees 1-10 = $18,030
1 x $2,011 per degree for degree 11= $2,011
$18,030 + $2,011 = $20,041

**note that if compensation were calculated using the 18% upper extremity rating, the total compensation would have been less (18% x 50 degrees = 9% x $1,803 per degree = $$16,227). Because the injury was to the shoulder, the Board applies the whole person rating, rather than converting the upper extremity rating to a whole person rating.*

Example 3:

On May 27, 2025, an injured worker suffered an amputation of the hand below the elbow. This is a scheduled body part and the injured worker is entitled to compensation for 40 degrees of impairment. Compensation values are doubled for amputations.

10 x $1,857 per degree for degrees 1-10 x 2 = $37,140
25 x $2,071 per degree for degrees 11-35 x 2 = $103,550
5 x $3,380 per degree for degrees 36-40 x 2 = $33,800
$37,140 + $103,550 + $33,800 = $174,490

Example 4:

On January 1, 2026, an employee sustains a back injury that results in a PPI rating of 19%.

10 x $1,913 per degree for degrees 1-10 = $19,130
9 x $2,133 per degree for degrees 11-9 = $19,197
$19,130+ $19,197 = $38,327

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

See answer to 20A.

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

An injured employee, who as a result of an injury or occupational disease is unable to perform work for which the employee has had previous training or experience, is entitled to vocational rehabilitation services necessary to restore the employee to useful employment. I.C. § 22-3-12-1.

When an employee has received temporary total disability benefits for a period of more than twenty-one (21) days, or if it appears that the compensable injury will prevent the employee from returning to their previous employment, the worker's compensation insurer shall forward a copy of the First Report of Injury to the central office of the division of disability and rehabilitative services, rehabilitation services bureau. I.C. § 22-3-12-2.

The office of vocational rehabilitation shall, upon receipt of the report of injury, immediately provide the injured employee with a written explanation of: (1) the rehabilitation services that are available for the injured employee; and (2) the method by which the injured employee may apply for these services. I.C. § 22-3-12-4. The office of vocational rehabilitation shall also determine the eligibility of the injured employee for rehabilitation services, and where appropriate, develop an individualized rehabilitation plan for the employee. I.C. § 22-3-12-4 (b). Finally, the office of vocational rehabilitation shall implement the rehabilitation plan. After completion of the rehabilitation program, the office of vocational rehabilitation shall provide job placement services to the rehabilitated employee. I.C. § 22-3-12-4 (c).

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

An injured employee is entitled to total permanent disability benefits when the work-related injuries are so debilitating and disabling so as to prevent the injured employee from engaging in reasonable types of employment for the remainder of his life. *Walker v. State*, 694 N.E.2d 258, 265 (Ind. 1998) (citing *Perez v. United States Steel,* 359 N.E.2d 925 (Ind. Ct. App. 1977)). An employee who establishes a claim for permanent total disability is entitled to worker's compensation benefits equal to 66 2/3% of the employee's average weekly wage for a period not to exceed five hundred (500) weeks. I.C. § 22-3-3-8.

The following chart shows the maximum total compensation benefit payable for temporary total disability, permanent partial impairment, permanent total disability, death or any combination of these benefits:

Date of Injury	Maximum Compensation#
7/1/16 - 6/30/17	$390,000.00
7/1/17 - 6/30/18	$390,000.00
7/1/18 - 6/30/19	$390,000.00
7/1/19 - 6/30/23	$390,000.00
7/1/23 - 6/30/24	$402,000.00
7/1/24 - 6/30/25	$414,000.00
7/1/25 - 6/30/26	$426,000.00

7/1/26 - 6/30/27	$439,000.00

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

The Act recognizes three classes of dependents who may collect worker's compensation benefits on behalf of a deceased employee: presumptive dependents, total dependents in fact, and partial dependents in fact. I.C. § 22-3-3-18.

Presumptive dependents shall be entitled to compensation to the complete exclusion of total dependents in fact and partial dependents in fact, and shall be entitled to such compensation in equal shares. *Id.* Presumptive dependents include a wife or husband who was living with the decedent at the time of death; unmarried children under the age of twenty-one (21) who were living with the decedent at the time of death or upon whom the laws of the state impose an obligation of child support; a child over the age of twenty-one (21) years who has never been married and who is either physically or mentally incapacitated from earning the child's own support, upon whom the laws of the state impose the obligation of the support of such unmarried child; and a child over the age of twenty-one (21) years who has never been married and who at the time of the death of the parent is keeping house for and living with such parent and is not otherwise gainfully employed. I.C. § 22-3-3-19. The term "child" includes stepchildren, legally adopted children, posthumous children, and acknowledged children born out of wedlock. *Id.* The dependency of any person as a presumptive dependent shall terminate upon the marriage of such dependent subsequent to the death of the employee, and such dependency shall not be reinstated by divorce. *Id.* The Act imposes other conditions to terminate the dependency of any child. *Id.*

Total dependents in fact shall be entitled to compensation to the complete exclusion of partial dependents in fact and shall be entitled to such compensation, if more than one (1) such dependent exists, in equal shares. The question of total dependency shall be determined as of the time of death. § 22-3-3-18.

Partial dependents in fact shall not be entitled to any compensation if any other class of dependents exist. The weekly compensation to persons partially dependent in fact shall be in the same proportion to the weekly compensation of persons wholly dependent as the average amount contributed weekly by the deceased to such partial dependent in fact bears to his average weekly wages at the time of the occurrence of the accident. The question of partial dependency in fact shall be determined as of the time of the occurrence of the accident. *Id.*

Total or partial dependents in fact shall include only those persons related to the deceased employee by blood or by marriage, except an unmarried child under the age of eighteen (18) years. Any such person who is actually totally or partially dependent upon the

deceased employee is entitled to compensation as such dependent in fact. The right to compensation of any person totally or partially dependent in fact shall be terminated by the marriage of such dependent subsequent to the death of the employee and such dependency shall not be reinstated by divorce. § 22-3-3-20.

When an employee has been awarded or is entitled to an award of compensation for a definite period, and dies from a cause other than the work-related injury, payment of the unpaid balance of such compensation shall be made to the dependents of the deceased. The maximum benefit payable to dependents of the second or third class shall not exceed three hundred fifty (350) weeks. The maximum benefit payable to dependents of the first class shall not exceed five hundred (500) weeks. I.C. § 22-3-3-16.

When death results from the work-related injury and occurs within five hundred (500) weeks of the injury, there shall be paid the total dependents of the deceased weekly compensation amounting to sixty-six and two thirds percent (66⅔%) of the deceased's average weekly wage until the compensation paid, when added to the compensation paid to the deceased employee, equals five hundred (500) weeks. I.C. § 22-3-3-17.

In addition, the employer must also pay for burial expense up to $10,000. I.C. § 22-3-3-21.

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

If an employee who has lost a limb or suffered a loss of use of a body part in a subsequent industrial accident, becomes permanently or totally disabled by reason of the loss, the employer shall be liable only for the compensation payable for such secondary injury. I.C. § 22-3-3-13. However, in addition to such compensation and after the completion of the payment therefor, the employee shall be paid the remainder of the compensation that would be due for such total permanent disability out of a special fund known as the second injury fund. *Id.*

An employee who has exhausted his maximum benefits may access the Second Injury Fund if it is established that the employee is totally permanently disabled from causes and conditions of which there are or have been objective conditions and symptoms proven that are not within the physical or mental control of the employee, and that the employee is unable to support himself in any gainful employment, not associated with rehabilitative or vocational therapy. I.C. § 22-3-3-13(d)(e) and (f). Compensation is equal to 66 2/3% of employee's average weekly wage for a period not to exceed three (3) years. The employee may seek renewal of benefits from the Second Injury Fund for successive periods not to exceed three (3) years.

Additionally, injured workers who sustain a compensable injury that results in the amputation of a body part, the enucleation of an eye, or the loss of natural teeth, may apply to the Second Injury Fund for the cost of repairs to or replacements for the artificial

members, braces, or prosthodontics that were provided pursuant to a prior award and are required due to either medical necessity or normal wear and tear, but not abuse. The employee is not required to meet any other requirement for admission to the second injury fund. I.C. § 22-3-3-4(f).

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

The Worker's Compensation Board, on its own motion or upon the application of either party, on account of a change in conditions, may re-open a claim and make modifications to the award by ending, lessening, continuing or extending payments previously awarded, either by agreement or a hearing. Any modification in benefits is subject to the maximum benefits allowed. I.C. § 22-3-3-27(a). An application by either party, or a modification by the Worker's Compensation Board, on its own motion, must be done within two (2) years from the last day for which compensation was paid. I.C. § 22-3-3-27(c). The Worker's Compensation Board, at any time, may correct any clerical errors in any finding or award. *Id.*

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

The following schedule of attorney's fees applies to an attorney who represents a claimant before the Board when the claim for compensation results in a recovery:

(1) A minimum of two hundred dollars ($200).
(2) Twenty percent (20%) of the first fifty thousand dollars ($50,000) of recovery.
(3) Fifteen percent (15%) of the recovery in excess of fifty thousand dollars ($50,000).
(4) Ten percent (10%) of the value of:
    (A) unpaid medical expenses;
    (B) out-of-pocket medical expenses; or
    (C) future medical expenses.

I.C. § 22-3-1-4. It is generally considered that these fees are paid out of an award and not in addition thereto. The Board maintains continuing jurisdiction over all attorney's fees in cases before the Board and may order a different attorney's fee or allowance in a particular case. *Id.*

Whenever the Worker's Compensation Board determines that the employer has acted in bad faith in adjusting and settling a claim or that the employer has not pursued the settlement of the claim with diligence, the Worker's Compensation Board shall, if compensation is awarded, fix the amount of the claimant's attorney fees and such attorney

fees shall be paid to the attorney and shall not be charged against the award of the claimant. I.C. § 22-3-4-12. The attorney's fees payable under Indiana Code § 22-3-4-12.1 may not exceed thirty-three percent (33 1/3) of the amount of the award. *Id.*

The Board may award to the employee or his dependents reasonable attorney fees in addition to the compensation and medical expenses in an action before the Worker's Compensation Board where the employer failed to comply with I.C. § 22-3-5-1 or I.C. § 22-3-7-34(a) or (b) (insurance requirements).

EXCLUSIVITY/TORT IMMUNITY

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

Indiana currently has no specific compensability requirements or applicable statutes for hybrid employees, or employees who work from home. The elements to establish a compensable injury are the same for remote and hybrid employees as they are for employees who report to specific work locations and for traveling employees.

30. Is the compensation remedy exclusive?

A. Scope of immunity.

The rights and remedies granted to an employee under the Worker's Compensation Act on account of personal injury or death by accident shall exclude all other rights and remedies of such employee, the employee's personal representatives, dependents, or next of kin, at common law or otherwise, on account of such injury or death. I.C. § 22-3-2-6.

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

(1) Indiana does not recognize the dual capacity doctrine. *Rodgers v. Hembd,* 518 N.E.2d 1120 (Ind. Ct. App. 1988); *Needham v. Fred's Frozen Foods, Inc.*, 359 N.E.2d 544 (Ind. Ct. App. 1977).

(2) Tort claims against an employer or co-employee for intentional torts are not barred by the exclusive remedy provision of the Act. *Perry v. Stitzer Buick, GMC, Inc.*, 637 N.E.2d 1282 (Ind. 1994).

(3) The exclusivity provision of Act does not preclude a claim against a medical services coordinator for damages resulting from emotional distress and physical injuries allegedly caused by fraudulent misrepresentations. *Stump v. Crawford &*

Co., 726 F. Supp. 228 (N.D. Ind. 1989).

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

In *Blade v. Anaconda Aluminum Co.*, 452 N.E.2d 1036 (Ind. Ct. App. 1983), plaintiff alleged that employer committed an intentional tort by knowingly violating safety regulations and failing to maintain a safe place to work. Despite noting plaintiff's counsel's compelling argument that employers are shielded from the full consequences of intentionally maintaining unsafe plants, the court held that the exclusivity provision of the Act precluded plaintiff's claim. *Id.* The court further noted that this issue is a matter to be resolved by the General Assembly, if indeed any change is to be made. *See also, Baker v. Westinghouse Electric Corporation,* 637 N.E.2d 1271 (Ind. 1994); *Bailor v. Salvation Army*, 854 F. Supp. 1341 (N.D. Ind. 1994); *Tribbett v. Tay Mor Industries, Inc.,* 471 N.E.2d 332 (Ind. Ct. App. 1984).

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

A minor who is employed, required, or permitted to work in violation of I.C. § 20-8.1-4-25 is entitled to double the amount of compensation and death benefits provided in the Act. I.C. § 22-3-6-1(c)(2). The insurance carrier is liable for one-half (1/2) of the benefits, and the employer is liable for the other one-half (1/2) of the benefits. *Id.* If the employee is a minor who is not less than sixteen (16) years of age and who has not reached seventeen (17) years of age and who at the time of the accident is employed, suffered, or permitted to work at any occupation which is not prohibited by law, this subdivision does not apply.

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

The Worker's Compensation Board has the exclusive jurisdiction to determine whether the employer, the employer's worker's compensation administrator, or the worker's compensation insurance carrier has acted with a lack of diligence, or in bad faith. I.C. § 22-3-4-12.1.

In the context of the denial of insurance claims, a finding of bad faith requires evidence of a state of mind reflecting a dishonest purpose, moral obliquity, furtive design, or ill will. *Arnold v. Cty. Line Landfill P'ship*, 267 N.E.3d 1007 (Ind. Ct. App. 2025) (quoting *Ag One Co-op v. Scott*, 914 N.E.2d 860, 864 (Ind. Ct. App. 2009). "Poor judgment and negligence, therefore, do not amount to bad faith; the additional element of conscious wrongdoing must be present." *Id.* A claim of bad faith does not arise simply because an insurance claim is erroneously denied. *Id.* Under Ind. Code 22-3-4-12.1, the court of appeals has previously held that penalties for "bad faith" may not be assessed if the employer, or its worker's compensation insurance carrier, is ultimately found not to be responsible for the

underlying claim. *See Scott,* 914 N.E.2d at 863–64; *Eastern Alliance Ins. Grp. v. Howell*, 929 N.E.2d 922, 926 (Ind. Ct. App. 2010); *Borgman v. Sugar Creek Animal Hosp.,* 782 N.E.2d 993, 998 (Ind. Ct. App. 2002), *trans. denied*.

A good faith disagreement that cannot be resolved does not translate to a lack of diligence. *Coachmen Indus., Inc. v. Yoder*, 422 N.E.2d 384, 394 (Ind. Ct. App. 1981). *Eastern Alliance Insurance Group v. Howell*, addressed the legal standard to assess penalties for lack of diligence:

> To act with "diligence" is to act with "caution or care" or "the attention and care required of a person." Webster's 3d New Int'l Dictionary 633 (2002). Hence, to act with a "lack of diligence" is to act without the degree of attention and care required of a person. Stated affirmatively, a lack of diligence is a failure to exercise the attention and care that a prudent person would exercise. That is, to act with a lack of diligence is to act negligently.

929 N.E.2d at 927. In reversing the Board's award for lack of diligence against Eastern Alliance, the court of appeals found that Eastern Alliance's *actions did not amount to a lack of diligence in refusing to pay a claim when there was no apparent reason to do so*. *Id.* at 928.

The court of appeals recently addressed a claim for bad faith and lack of diligence in *Arnold v. County Line Landfill*, 267 N.E.3d 1007. In that case, the injured worker alleged that the employer acted in bad faith or with a lack of diligence in authorizing medical treatment for his work-related injury, resulting in a higher PPI rating and prolonged recovery. The court of appeals held that the injured worker failed to prove evidence of ill will to support a claim for bad faith. *Id.* Further, while the Board found that the employer's delays in handling the claim had deleterious effects on the injured worker, the Board did not find County Line's conduct to constitute an "actionable lack of diligence . . ." In that case, the employer produced evidence showing it had reasons to question whether the injured worker's symptoms were related to the work injury. *Id.* The court also concluded that the Board was not required to establish a threshold standard for future claims of bad faith or lack of diligence. *Id.*

If lack of diligence, bad faith, or an independent tort is proven, the award to the claimant shall be at least five hundred dollars ($500), but not more than twenty thousand dollars ($20,000), depending upon the degree of culpability and the actual damages sustained. *Id.* This damage will be paid by the employer, worker's compensation administrator, or worker's compensation insurance carrier, whomever was responsible for the bad faith acts. I.C. § 22-3-4-12.1.

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

Indiana is an employment at will state. There is no obligation under the Act to continue an injured worker's employment because of his physical disability. However, there are three (3) exceptions to the employment at will doctrine including a public policy argument. The Indiana Supreme Court has held that the worker's compensation statue has created a public policy argument in favor of an employee filing a worker's compensation claim. *Frampton v. Central Indiana Gas Co.*, 297 N.E.2d 425 (Ind. 1973). Thus, when an employee is discharged, whether expressly or constructively, solely for exercising a statutorily conferred right, an exception to the general rule of at will employment is recognized and a cause of action exists in the employee as a result of the retaliatory discharge. *Tony v. Elkhart County*, 851 N.E.2d 1032 (Ind. Ct. App. 2006). Indiana case law allows an employee at will to bring an action for retaliatory discharge if the employee was discharged for exercising his or her statutorily conferred right to file a worker's compensation claim. Moreover, the Americans with Disability Act or a worker's union collective bargaining agreement may provide a terminated employee with some additional recourse.

THIRD PARTY ACTIONS

35. Can third parties be sued by the Claimant?

Yes, an injured employee may file a civil lawsuit to recover damages received from a work-related accident which was caused by a person, manufacturer, or a sub-contractor not of the same employment as the person injured. I.C. § 22-3-2-13. Additionally, the Indiana Court of Appeals, as a matter of first impression, held that an injured employee "is not required to file a WCA claim against her employer prior to pursuing litigation against a third-party tortfeasor. *Brenner v. All Steel Carports, Inc.*, 122 N.E.3d 872, 881 (Ind. Ct. App. 2019).

If an injured worker brings an action against an other person and judgment is obtained and paid and accepted, or settlement is made with the other person, either with or without suit, then from the amount received by the employee or dependents there shall be paid to the employer or the employer's compensation insurance carrier, subject to its paying its pro-rata share of the reasonable and necessary costs and expenses of asserting the third party claim, the amount of compensation paid to the employee or dependents, plus the services and products and burial expenses paid by the employer or the employer's compensation insurance carrier. Further, upon judgment or settlement, the liability of the employer or the employer's compensation insurance carrier to pay further compensation or other expenses shall thereupon terminate. I.C. § 22-3-2-13.

In the event the injured employee (or a deceased employee's dependents) has not received compensation or services and products or death benefits from the employer or

the employer's compensation insurance carrier, but procures a judgment against the other party for injury or death, which judgment is paid, or if settlement is made with the other person either with or without suit, then the employer or the employer's compensation insurance carrier shall have no liability for payment of compensation or for payment of services and products or death benefits whatsoever. *Id.*

In the event the injured worker procures a final judgment against the other person other than by agreement, and the judgment is for a lesser sum than the amount for which the employer or the employer's compensation insurance carrier is liable under worker's compensation law, then the employee has the option of either collecting the judgment and repaying the employer or the employer's compensation insurance carrier for compensation and medical services and products previously paid, or of assigning all rights under the judgment to the employer or the employer's compensation insurance carrier and thereafter receiving all compensation and services and products to which the employee would be entitled if there had been no action brought against the other party. *Id.*

If an injured worker fails to institute legal proceedings against an other person with legal liability to pay the claim within two (2) years after the cause of action accrues, the employer or its worker's compensation insurance carrier may commence a collections action against the other person in whom legal liability exists. The employer or compensation insurance carrier shall have one (1) year from the date of the expiration of the two (2) years when the action accrued to the injured employee, notwithstanding the provisions of any statute of limitations to the contrary. *Id.*

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

A co-employee is not immune from tort suit just by having the same employer as the injured employee; a co-employee is entitled to immunity only when acting in course of employment at time of incident. *Nelson v. Denkins*, 598 N.E.2d 558 (Ind. Ct. App. 1992). The exclusive remedy provision will apply to co-worker's actions were within the scope of employment. I.C. 22-3-2-6. *See also Hatke v. Fiddler*, 868 N.E.2d 60 (Ind. Ct. App. 2007).

37. Is subrogation available?

If an injured employee agrees to receive compensation from the employer or the employer's compensation insurance carrier, the employer or employer's carrier has a lien upon any amount which the employee receives from a third party. I.C. § 22-3-2-13; I.C. § 22-3-7-36.

MEDICALS

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

Payment for authorized medical expenses is addressed in I.C. § 22-3-7.2 and the Indiana Administrative Code. 631 I.A.C. 1-1-32. I.C. § 22-3-7.2 covers claims that are submitted for payment that have "no defect, impropriety, or particular circumstance requiring special treatment preventing payment" ("clean claims"). This statute requires the employer or compensation insurance carrier to notify a medical service provider of any deficiencies in a submitted claim not more than: (1) thirty (30) days after the date the claim is received by the payor, for a claim that is filed electronically; or (2) forty-five (45) days after the date the claim is received by the payor, for a claim that is filed on paper. I.C. § 22-3-7.2-5. The payor must describe any remedy necessary to establish a clean claim. Failure to notify the medical service provider of any deficiency within the time limit establishes the submitted claim as a clean claim. *Id.* A medical service provider is entitled to interest on the amount of the employer's pecuniary liability on clean claims beginning the thirty-first (31st) day after the claim is received if filed electronically, or beginning the forty-sixth (46th) day after a claim is received if filed on paper, until the date the claim is paid. I.C. § 22-3-7.2-6.

If payment for a medical service is in dispute, the Indiana Administrative Code requires the provider and payer to attempt to resolve their payment dispute informally. 631 I.A.C. 1-1-32. If a resolution cannot be reached, the provider may file an Application for Adjustment of Claim for provider fee (form 18487) if necessary. After June 30, 2011, a medical service provider must file an Application for Adjustment of a Claim for a medical service provider's fee with the Board not later than two (2) years after the receipt of an initial written communication from the employer, the employer's insurance carrier, if any, or an agent acting on behalf of the employer after the medical service provider submits a bill for services or products. I.C. § 22-3-2-5.

There are currently no provisions for penalties for late payment of a medical expense (excluding the provisions for interest on clean claims). However, if the Board adjudicates a provider fee application on the basis that the insurance carrier's billing review company did not utilize accurate data in determining the employer's pecuniary liability, the Board may assess a civil penalty against the billing review service in an amount not less than one hundred dollars ($100) and not more than one thousand dollars ($1,000). I.C. § 22-3-3-5.2.

39. What, if any, mechanisms are available to compel the production of medical information at the administrative level?

A. Medical reports.

Generally, the Indiana Trial Rules do not govern or bind the Worker's Compensation Board. However, if the Board specifically adopts certain trial rules, then those rules will govern the proceedings of claims in front of the Board. *Riley v. Heritage Products, Inc.*, 803 N.E.2d 1185 (Ind. Ct. App. 2004). The Board has specifically adopted the Indiana Trial Rules regarding discovery (Trial Rules 26 through 37). As such, the Worker's Compensation Board has authority to compel discovery. *Josam Manufacturing Co. v. Ross,* 428 N.E.2d 74 (Ind. Ct. App. 1981); Ind. R. Trial P. 28(F). Such discovery includes interrogatories, depositions and/or requests for production to obtain relevant medical records.

B. Executed authorization.

Pursuant to Indiana Trial Rule 28(F), the Worker's Compensation Board does have authority to compel discovery. *Ross*, 428 N.E.2d 74. The authority to compel discovery is generally limited to cases in which an Application for Adjustment of Claim has been filed, and the ability to compel discovery in non-litigated matters is limited.

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

A. Claimant's choice of a physician.

The employer has the right to designate the physician for the treatment of an employee's work-related injury. I.C. § 22-3-3-4. An employee generally is not free to elect at the employer's expense additional treatment or treatment with physicians other than those tendered by the employer. *K-Mart v. Morrison*, 609 N.E.2d 17, 33 (Ind. Ct. App. 1993); *Richmond State Hosp. v. Waldren*, 446 N.E.2d 1333, 1336 (Ind. Ct. App. 1983); *Perez v. United States Steel Corp*., 172 Ind. App. 242, 359 N.E.2d 925, 927 (Ind. Ct. App. 1977). It is generally held that the employee should ordinarily not incur medical expense without first giving the employer a reasonable opportunity to furnish such services, and an employee who does so will be liable for that expense. The mere fact that claimant has more faith in the family doctor, or lacks confidence in the employer's doctor, is not enough to change the rule. *Daugherty v. Indus. Contracting & Erecting*, 802 N.E.2d 912, 916 (Ind. 2004). Nonetheless, the statute allows the employee to select medical treatment under limited circumstances: (1) in an emergency; (2) if the employer fails to provide needed medical care; or (3) for other good reason. *Id.* (citing Ind. Code § 22-3-3-4(d)).

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

Because the employer has the right to designate the physician for the treatment of an employee's work-related injury, employer or insurance carrier challenges to the attending physician's treatment recommendations are disfavored by the Board. Nevertheless, an employer has a right to obtain a medical examination by a physician or surgeon other than the attending physician. I.C. § 22-3-3-6.

Both parties have the right to request an Independent Medical Examination. An injured worker has the right to request a Board-appointed independent medical examination (IME) if the employee disagrees with an the employer's termination of temporary total disability benefits. I.C. § 22-3-3-7; *Woehnker v. Cooper Tire & Rubber Co.*, 764 N.E.2d 688 (Ind. Ct. App. 2002). A request for a Board-appointed IME under I.C. § 22-3-3-7 must be made within seven (7) days of receipt of the Notice of Termination of temporary total disability benefits. Either party may request a Board-appointed IME at other times pursuant to I.C. § 22-3-4-11. IMEs under section 11 are discretionary. Generally, only one IME is allowed per claim, though in some circumstances involving multiple body part injuries or treatment in multiple disciplines, it may be necessary for the Board to order examinations by multiple physicians.

Board-appointed IMEs will opine on diagnosis, address work status, provide recommendations for further treatment and assess whether an injured worker has reached maximum medical improvement. Board-appointed IMEs do not address permanent partial impairment.

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

After an injury and prior to an adjudication of permanent impairment, the employer shall furnish or cause to be furnished, free of charge to the employee, an attending physician for the treatment of the employee's injuries, and in addition thereto such services and products as the attending physician or the Worker's Compensation Board may deem necessary. I.C. § 22-3-3-4. There are no treatments specifically excluded by the Act, such as chiropractic care or acupuncture, if such services are deemed necessary by the attending physician or the Board. After the adjudication of impairment, the employer may furnish or the Board may award additional medical services or products that are deemed necessary to "necessary to limit or reduce the amount and extent of the employee's impairment." I.C. § 22-3-3-4(c); *Jones v. State*, 477 N.E.2d 353 (Ind. Ct. App. 1985); *Grand Lodge Free & Accepted Masons v. Jones,* 590 N.E.2d 653 (Ind. Ct. App. 1992).

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

If an accident occurs that results in the loss or damage to an artificial member, a brace, eyeglasses, an implant, prosthodontics, or other medically prescribed device, the employer shall repair the artificial limb, brace, or member or furnish an identical or reasonably equivalent replacement. I.C.I.C. § 22-3-3-4(g).

Where an injury results in the amputation of an arm, hand, leg or foot, the enucleation of an eye, or the loss of natural teeth or prosthodontics, the employer is required to furnish an artificial member, proper braces, and prosthodontics. I.C. § 22-3-3-4(f). Injured workers who sustain a compensable injury that results in the amputation of a body part, the enucleation of an eye, or the loss of natural teeth, may apply to the Second Injury Fund for the cost of repairs to or replacements for the artificial members, braces, or prosthodontics that were provided pursuant to a prior award and are required due to either medical necessity or normal wear and tear, but not abuse.

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

Although the Act does not specifically address vehicles or home modifications as medical expenses, these items could be included as medical benefits or other medically-prescribed devices under I.C. § 22-3-3-4; *Jones & Laughlin Steel Corp. v. Kilburne*, 477 N.E.2d 345 (Ind. Ct. App. 1985). In *Kilburne,* the Court of Appeals upheld the Board's award requiring the employer to provide the injured employee with wheelchairs, special soft shoes, grab bars in bathroom, ramps to garage and home, and remodeling to enlarge a bathroom to accommodate a wheelchair.

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

The Worker's Compensation Act has a fee schedule for medical service providers and medical service facilities. A "medical service facility" means any of the following that provides a service or product under the Act and uses the CMS 1450 (UB-04) form or the CMS 1500 (HCFA-1500) form for Medicare reimbursement:

(1) An ambulatory outpatient surgical center (as defined in IC 16-18-2-14).
(2) A hospital (as defined in IC 16-18-2-179).
(3) A hospital based health facility (as defined in IC 16-18-2-180).
(4) A medical center (as defined in IC 16-18-2-223.4).

A "medical service provider" refers to a person or an entity that provides services or products to an employee. A "medical service provider" includes a "medical service facility" unless otherwise provided under the Act.

The amount that is owed is set forth in Ind. Code 22-3-6-1(k):

> The pecuniary liability of an employer or an employer's insurance carrier for a specific service or product covered under worker's compensation and provided by a medical service facility is equal to a reasonable amount, which is established by payment of one (1) of the following:
>
> (1) The amount negotiated at any time between the medical service facility and any of the following:
>
> (A) The employer.
>
> (B) The employer's insurance carrier.
>
> (C) A billing review service on behalf of a person described in clause (A) or (B).
>
> (D) A direct provider network that has contracted with a person described in clause (A) or (B).
>
> (2) Two hundred percent (200%) of the amount that would be paid to the medical service facility on the same date for the same service or product under the medical service facility's Medicare reimbursement rate, if, after conducting the negotiations described in subdivision (1), an agreement has not been reached.

The pecuniary liability for charges of a medical provider that is not a medical service facility is an amount equal to or less than the charges made by medical service providers at the eightieth percentile in the same community for like services or products. *Id.*; I.C. § 22-3-3-5.

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

There are no specific provisions or requirements within the Indiana Worker's Compensation Act concerning managed care. The employer/insurer has the right to choose the treating physician, which may include a managed care type provider. I.C. § 22-3-3-4. Additionally, employer/insurers may utilize third-party administrators, with captive managed care providers, for claims administration purposes.

PRACTICE/PROCEDURE

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

A denial of compensability of a claim must be made in writing to the injured employee within thirty (30) days after knowledge of the injury. I.C. § 22-3-3-7(b). If an employer is unable to make a determination regarding liability within the first thirty (30) days, the Board may approve an additional thirty (30) days upon a written request of the employer

or the employer's insurance carrier that sets forth the reasons that the determination could not be made within thirty (30) days and states the facts or circumstances that are necessary to determine liability within the additional thirty (30) days. More than thirty (30) days of additional time may be approved by the Worker's Compensation Board upon filing of a petition with the Board that states 1) the extraordinary circumstances that have precluded determination of liability within the initial sixty (60) days; 2) that status of the investigation on the date of the petition is filed; 3) the facts or circumstances that are necessary to make a determination; and 4) a timetable of completion remaining on the investigation. *Id.* State Form 48557 can be utilized for the purpose of requesting additional time in accordance with the foregoing.

A Notice of Denial (form 53914) is required if compensability is in dispute. The Notice is filed via EDI and must be served upon the injured worker. Additionally, an employer may file a Notice of Denial if part of a claim is in dispute. The Notice of Denial allows the employer to select one or more reasons why a claim is being denied in whole or in part.

47. What is the method of claim adjudication?

A. Administrative level.

An employee may file an Application for Adjustment of Claim (Form No. 29109) within the statutory period allowed. After the employee files a claim, the case is set for a hearing before a single member of the Board. Unless otherwise agreed, the hearing must be held in the county where the injury occurred or in an adjoining county. The defendant/employer may file a responsive pleading any time prior to the hearing date. 631 I.A.C. 1-1-8. However, no such answer is required unless the defendant relies upon the special defenses enumerated in Indiana Code § 22-3-2-8. *Id.* In such cases, the defendant must plead by an affirmative answer such special defenses no later than forty-five (45) days before the hearing date. *Id.*

In all hearings proof may be made by oral testimony, or by depositions. 631 I.A.C. 1-1-12. The hearing judge is not bound by any technical rules of practice in conducting hearings. 631 I.A.C. 1-1-3. A physician's statement that meets the requirements set out in I.C. § 22-3-3-6(e) is admissible into evidence unless the statement is ruled inadmissible on other grounds. The parties may stipulate to the facts in writing. 631 I.A.C. 1-1-11. If all related facts and issues are so stipulated, the Board may make an award without a hearing. *Id.* The single hearing member after due consideration determines the dispute in a summary manner and forwards a copy of the decision to each party. I.C. § 22-3-4-6.

If either party is not satisfied with the decision of the award made by less than all the members, an application for review may be filed with the Board within thirty (30 days). I.C. § 22-3-4-7. If the first hearing was not held before the Full Board, the Board shall review the evidence, or if deemed advisable hear the parties at issue and make an award and file the same with finding of the facts on which it is based and send a copy thereof of the

parties in dispute. I.C. § 22-3-4-7. The application for review is usually heard by all the members of the Board.

The Full Board hearing is a trial de novo. *Burton v. Rock Road Construction Co.*, 235 N.E.2d 210 (Ind. Ct. App. 1968). Therefore, the Full Board can make its own findings and determinations. 631 I.A.C. 1-1-15. The Full Board has the discretion of admitting new or additional evidence. *Id*. Usually oral argument, although not required, is presented to the Full Board on the evidence submitted to the single hearing member. Either party may file with the Board no later than thirty (30) days prior to the review date, a brief or statement setting forth the errors alleged. *Id.* The opposing party has the right to file a rebuttal no later than ten (10) days prior to the review date. The Full Board after due consideration will render a decision and forward a copy of same to each party. I.C. § 22-3-4-7. If not appealed, the Full Board's decision is final. *Id.*

B. Trial court.

A party may seek to enforce an award of the Board by filing it in circuit or superior court. There are notice requirements before seeking enforcement. I.C. § 22-3-4-9. Further, the award of the Board must be a final and conclusive determination. *Nishikawa Std. Co. v. Minh Van Phan*, 703 N.E.2d 1058, 1998 Ind. App. LEXIS 1967 (Ind. Ct. App. 1998).

C. Appellate.

An award of the Board by less than all of the members, if not reviewed pursuant to a written petition mentioned above, shall be final and conclusive. I.C. § 22-3-4-8. Either party may within thirty (30) days from the date of the Full Board's decision appeal the case to the Court of Appeals for errors of law under the same terms and conditions as govern appeals in ordinary civil actions. *Id.* Any party desiring to appeal must file with the secretary of the Board within fifteen (15) days from the Full Board's decision, a written praecipe designating specifically the pleadings to be incorporated into the transcript for such appeal. 631 I.A.C. 1-1-22. The only assignment of error that is necessary is that the Full Board's decision is contrary to law. I.C. § 22-3-4-8. Further appeal must be filed with the Indiana Supreme Court.

48. What are the requirements for stipulations or settlements?

The parties to any proceeding before the Board may stipulate the facts in writing from which the Board will make its order or award. 631 I.A.C. 1-1-11. Where the stipulation covers a permanent partial impairment, an Agreement to Compensation (form 1043) may be utilized for the payment of permanent partial impairment. It is necessary to file with the stipulation a report of a physician furnished by the employer. The employee may waive examination by a physician other than the one provided by the employer. *Id.*

No agreement can operate to relieve any employer in whole or in part of any obligation created by the Act. I.C. § 22-3-2-15(a). However, nothing in the Act should be construed as to prevent the parties of a claim from entering into voluntary agreements in settlement. *Id.* I.C. § 22-3-2-15 allows for parties to enter into a voluntary settlement agreement of the injured employee's rights under the provisions of the Act. But, such a settlement must be reduced to writing and approved by the Board. *Id.* The Board will not approve a settlement which is not in accordance of the rights of the parties, nor will the Board approve a settlement made less than seven (7) days from the date of the injury or death. *Id.* In any case where a provider fee application has been filed, the provider must sign off on any settlement agreement between the employee and employer before it will be approved by the Board. In all cases, financial responsibility for medical expenses must be addressed. A compromise settlement approved by a member of the worker's compensation board during the employee's lifetime shall extinguish and bar all claims for compensation for the employee's death if the settlement compromises a dispute on any question or issue other than the extent of disability or the rate of compensation. *Id.*

A minor dependent, by parent or legal guardian, may compromise disputes and may enter into a settlement agreement, and if approved by the Board, the settlement agreement will have the same effect as though the minor had been an adult. *Id.*

Any settlement payment must be made no later than thirty (30) days after the date the Worker's Compensation Board approves the agreement. *Id.* If an employer fails to make payment within the thirty (30) days, the employer may be subject to the civil penalties. *Id.*

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

Yes. See answer to #47 above.

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

Yes. A settlement agreement is not valid until approved by a member of the Board, and the member of the Board cannot approve an agreement which is not in accordance with the rights of the parties as given in the Act. I.C. § 22-3-2-15.

RISK FINANCE FOR WORKERS' COMPENSATION

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

Every employer who is bound by the compensation provisions of the Act shall insure the payment of compensation to the employer's employees and their dependents or procure from the Board a certificate authorizing the employer to carry such risk without insurance. I.C. § 22-3-2-5(a). Excluded from this provision are the state, counties, cities, towns, school townships, other municipal corporations, and banks. *Id.* The state is not allowed to purchase worker's compensation insurance, but rather is entitled to establish a program of self-insurance to cover its liability. *Id.* Pursuant to I.C. § 22-3-5-1(a), every employer, except those exempted by I.C. § 22-3-2-5, shall:

A. Insure and keep insured the employer's liability in some corporation, association or organization authorized to transact the business of worker's compensation insurance in Indiana; or
B. Furnish to the Board satisfactory proof of the employer's ability to pay direct the compensation in the amount and manner when due.

The Board may require the deposit of an acceptable security indemnity or bond to secure the payment of compensation liabilities as they are incurred. *Id.*

Subject to the approval of the Board, any employer may enter into any agreement with the employees to provide a system of compensation, benefit, or insurance in lieu of the compensation and insurance provided by the Act. I.C. § 22-3-5-4(a). However, no substitute system will be approved unless it confers benefits at least equivalent to the benefits provided by the Act, nor if it requires contributions from the employees unless it confers benefits in addition to those provided under the Act at least commensurate with such contributions. *Id.* Such a system may be terminated by the Worker's Compensation Board on reasonable notice and hearing to the interested parties if it appears that the same is not fairly administered, its operation discloses latent defects threatening its solvency, or if for any substantial reason it fails to accomplish the purpose of the Act. *Id.*

Additionally, groups of employers may form mutual insurance associations or reciprocal or interinsurance exchanges subject to such reasonable conditions and restrictions as may be fixed by the department of insurance. I.C. § 22-3-6-2.

To the extent that a principal retains an independent contractor, the employer must verify in writing that each independent contractor (specifically, their respective employer) carries worker's compensation insurance. I.C. § 22-3-2-14. If a principal does not comply with Indiana Code § 22-3-2-14 and ensure the independent contractor carries worker's compensation insurance, then the principal shall be liable to the same extent as such

independent contractor for the payment of compensation, physician fees, hospital fees, nurse's charges and burial expenses on account of injury or death of any employee of the independent contractor due to an accident arising out of the and in the course of the performance of the work covered by such subcontract. *Id.*

An employer's failure to carry worker's compensation insurance is a Class A criminal misdemeanor. I.C. § 22-3-7-34. It should be noted that there is no criminal penalty for a principal failing to verify or ensure that its independent contractor maintains proper worker's compensation insurance.

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

A. For individual entities.

See answer to #50 above. Moreover, the employer upon application for certificate of self-insurance, must certify that it has adequate facilities for making necessary accident reports, executing compensation agreements and other necessary documents, and that it has placed in charge of this work a person(s) within the state familiar with the Act and the rules of the Board. 631 I.A.C. 1-1-29. In addition, the Worker's Compensation Board may require the deposit of an acceptable security, indemnity or bond to secure the payment of compensation liabilities. I.C. § 22-3-5-1(b). There is an initial application fee of $500.00 to be paid along with the proof of financial ability, and a renewal fee of $250.00 if the employer holds a certificate of self-insurance. I.C. § 22-3-5-1(b)(1) and (2).

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

See answer to #50 above. For the purposes of complying with I.C. § 22-3-5-1, groups of employers are authorized to form mutual insurance associations or interinsurance exchanges subject to such reasonable conditions and restriction as may be set by the department of insurance. I.C. § 22-3-6-2. Additionally, membership in such groups so approved, together with evidence of the payment of premiums due, is evidence of compliance with I.C. § 22-3-5-1. *Id.*

53. Are "illegal aliens" entitled to benefits of worker's 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 the definition of "employee"?

The Indiana Worker's Compensation Act does not have any specific provisions regarding the eligibility of "illegal aliens" for worker's compensation benefits. However, the general public policy of the Board will be to award benefits, particularly medical services and supplies and compensation for permanent partial impairment to any employee who

sustains an injury by accident that arises out of and in the course of employment. This policy is intended to deter employers from escaping liability for injury to workers if the employer hires individuals who cannot lawfully work in the United States, or targets such workers for dangerous jobs. The Board will hear evidence from an employer seeking to avoid the payment of compensation benefits based on an injured worker's legal status, but generally requires a showing that the employer was not complicit in hiring an "illegal alien."

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

It is likely that terrorist acts or injuries are compensable under the Act although no Indiana case has specifically addressed the issue. When determining whether an injury "arises out of" one's employment, the three possible risk categories are: 1. Risks associated with the employment and those are compensable; 2. Risks that are neutral and have no specific relationship to the employer or employee; and 3. Risks that are personal to the employee and therefore not compensable. Examples of neutral risks include "cases of stray bullets, roving lunatics, and other situations in which the only connection of the employment with the injury is that its obligations place the employee in a particular place at a particular time when they were injured by some neutral force." *Conway v. School City of East Chicago*, 734 N.E.2d 594, 599 (Ind. Ct. App. 2000) (citing *K-Mart Corp. v. Novak*, 521 N.E.2d 1346, 1349 (Ind. Ct. App. 1988). As a result, it is likely that injuries resulting from terrorist acts are covered under Indiana worker's compensation law as they arise out of a worker's employment and obligations to be at a certain place at a specific time.

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?

Under Medicare regulations (42 C.F.R. 411.46), Medicare is secondary payer to the payment of worker's compensation by a worker's compensation carrier or self-insured employer. The obligation to pay for medical treatment or services for a compensable condition cannot be shifted to Medicare. Therefore, Medicare has an interest in all lump sum settlements of a worker's compensation matter that resolve obligations for future medical. The Indiana Worker's Compensation Act does not have any specific provisions or additional requirements for satisfying Medicare's interests. The Board has a "checklist" for all settlement agreements submitted pursuant to I.C. § 22-3-2-15 that requires the parties to describe any future medical care and who will have financial responsibility for the payment of such care.

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).

The Medicaid lien statute is found at I.C. § 12-15-8-1 and provides a statutory lien "to the extent of the amount paid by the office on any recovery under the claim, whether by judgment, compromise or settlement." A lien under this chapter is not effective unless the office takes the following actions before the party alleged to be liable has concluded a final settlement with the injured, ill, or diseased person or the person's attorney or legal representative as compensation for the person's injury, illness, or disease:

(1) Filing in the Marion County circuit court a written notice stating the following:
    (A) Notice of the eligibility of the injured, ill, or diseased person for Medicaid.
    (B) The name and address of the injured, ill, or diseased person.
    (C) The name of the person, firm, limited liability company, or corporation alleged to be liable to the injured, ill, or diseased person.
(2) Sending to the person, firm, limited liability company, or corporation alleged to be liable, by registered or certified mail, a copy of the notice required by subdivision (1), with a statement of the date of filing of the notice.

I.C. § 12-15-8-3.

57. 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, went into effect on April 14, 2003. The law provides an exception for worker's 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.

The law regarding confidentiality of medical records is codified at I.C. § 16-39-6-3. This section states confidential records may be produced on court order in a cause in which the records and proceedings are relevant or material. There is no section specific to worker's compensation law. The privacy of mental health records is codified at I.C. § 16-39-2, et seq., 16-39-3, et seq. and 16-39-4, et seq. *L.G. v. S.L.*, 76 N.E.3d 157, 170 (Ind. Ct. App.

2017). In addition, no court has yet addressed how those privacy concerns are affected by federal law.

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

Independent contractors are not employees and therefore, are not entitled to worker's compensation benefits. A person is an independent contractor and not an employee if the person is an independent contractor under the guidelines of the United States Internal Revenue Service. I.C. § 22-3-6-1. An independent contractor is required to file a statement with the department of revenue and obtain a certificate of exemption on an annual basis. I.C. § 22-3-2-14.5. The certificate of exemption must also be filed with the Board annually. *Id.*

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

As employers, all employee leasing services and temporary agencies are required by I.C. §§ 22-3-2-5, 22-3-5-1, and 22-3-5-5 to maintain worker's compensation coverage for all employees. Proof of coverage is required to be furnished to the Worker's Compensation Board.

Whenever any employee is injured in the joint service of two (2) or more employers who are subject to the provisions of the Worker's Compensation Act, such employers shall contribute to the payment of such compensation in proportion to their wage liability to such employees. I.C. § 22-3-3-31. However, such employers may make reasonable arrangements for a different distribution as between themselves of the ultimate burden of compensation. *Id.*

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?

An owner-operator who provides a motor vehicle and the services of a driver to a motor carrier under a written contract that is subject to I.C. § 8-2.1-24-23, 45 I.A.C. 16-1-13, or 49 C.F.R 376 is not an employee of the motor carrier and is therefore not covered under the Indiana Worker's Compensation Act. I.C. § 22-3-6-1(b)(8). The owner-operator may elect to be covered and have the owner-operator's drivers covered under a worker's compensation insurance policy or authorized self-insurance that insures the motor carrier if the owner-operator pays the premiums as requested by the motor carrier. *Id.* An election by an owner-operator under this subdivision does not terminate the independent contractor status of the owner-operator for any other purpose. *Id.*

A driver providing drive away operations is an independent contractor and not an employee when the vehicle being driven is the commodity being delivered; and the driver has entered into an agreement with the party arranging for the transportation that specifies the driver is an independent contractor and not an employee. *Id.*

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.

More information, including forms and online services, can be found on Indiana's Worker's Compensation Board website: http://www.in.gov/wcb/

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?

See responses to questions 54 and 55 above. Worker's compensation compromise settlements require satisfaction of Medicare's lien interests if Medicare made conditional payments for an injured plaintiff. Both parties' counsel may be held liable to satisfy the lien if Medicare's interests are not properly protected. The MMSEA Section 1111 mandates proper reporting of workers' compensation settlements to the government. Further, as indicated above, certain workers' compensation settlements are required to consider Medicare's interests and a Medicare set-aside agreements may provide an avenue for protection of that interest. Counsel must know how to determine if a Medicare set-aside is needed, how to determine the proper amount and then how to properly establish these arrangements.

63. Does Indiana permit medical marijuana and what are the restrictions for use and for work activity Indiana's Worker's Compensation law?

In Indiana, the use of marijuana is not legal for recreational or medical purposes. An employer may assert the affirmative defense of intoxication as a bar to compensation. However, the employer must prove that intoxication caused the injury; proof of a positive

drug test is insufficient, alone, to establish the defense. Proof of the affirmative defense requires a showing that marijuana caused an intoxicating effect, which contributed directly to the cause of the accident. Because there are no standards establishing levels of intoxication by marijuana use, proving this defense presents challenges.

64. Does Indiana permit recreational use of marijuana and what are the restrictions for use and for work activity in Indiana Workers' Compensation law?

Indiana does not permit recreational use of marijuana. An employer may assert the affirmative defense of intoxication as a bar to compensation. However, the employer must prove that intoxication caused the injury; proof of a positive drug test is insufficient, alone, to establish the defense. Because there are no standards establishing levels of intoxication by marijuana use, proving this defense presents challenges.