BELOW THE RED LINE



WORKERS' COMPENSATION UPDATE "We've Got the State Covered!"

A Newsletter for Employers and Claims Professionals

October 2015

A Word From The Practice Group Chair

This month's edition of Below the Redline provides some interesting insight into a new trend in Illinois workers' compensation law – temporary transitional employment (TTE). TTE provides an opportunity for employers to place workers who have restrictions and cannot be accommodated into various light duty jobs while they continue their healing process and reach maximum medical improvement. Jessica Bell of our Peoria and Springfield offices provides a short discussion of this new trend and how TTE might be used in your claims handling.

We also take this opportunity to recognize the achievements of two of our workers' compensation attorneys. Bruce Bonds (Urbana) was just appointed to a newly formed IWCC Rules Committee and Joe Guyette (Urbana) was honored as a "40 Under 40" leader in the area.

In addition, we take a few paragraphs to provide a summary of the more interesting statistics from this past summer's Commission Report to the governor, which highlights some of the notable trends in Illinois workers' compensation claims during Fiscal Year 2014.

Finally, we note our upcoming seminar in Naperville, Illinois, on November 3, 2015, entitled "The Crossroads of Governmental Law, Workers' Compensation Law & You." This event combines two of the firm's practice groups to offer advice for governmental workers' compensation claims. There is still time to register, and we would love to have you attend. We anticipate offering more of these seminars in 2016, so please stay tuned for more information on those programs.

Craig S. Young Chair, WC Practice Group cyoung@heylroyster.com



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Bruce Bonds Appointed to IWCC Committee



On October 29, 2015, Bruce Bonds (Urbana) was appointed to the Illinois Workers' Compensation Rules Review and Revisions Committee by Commissioners Michael Brennan and Stephen Mathis, who co-chair the Committee.

The Crossroads of Governmental Law, Workers' Compensation Law & You

DATE: Tuesday, November 3
TIME: Seminar: 12:00 pm — 3:00 pm
Reception @ 3:00 pm
LOCATION: Hotel Arista
2139 CityGate Lane

Naperville, IL 60563

Register at www.HeylRoyster.com

RECENT COMMISSION STATS

In June 2015, the Workers' Compensation Commission released its Fiscal Year 2014 Annual Report highlighting the most recent trends in Illinois workers' compensation claims. According to the report, roughly 200,000 work-related accidents occurred last year, but fewer than 50,000 of those resulted in filed claims. Of those nearly 50,000 cases, nearly 40,000 were settled, another 5,000 were dismissed, and arbitration decisions were issued in the remaining 3,000-4,000 cases.

The report noted that roughly half of the cases arbitrated were reviewed to the Workers' Compensation Commission, which seems like an unusually low number considering the Commission is the true finder-of-fact. These reviews produce around 1,500 panel decisions per year, but surprisingly some 500 cases were dismissed by the Commission.

In a departure from years prior, the report states that only about 25 percent of Commission decisions were reviewed to the circuit court. The circuit courts collectively issued 250-300 orders and decisions per year, down only slightly from prior years. It appears that about one-third of the cases were appealed to the Appellate Court, Workers' Compensation Commission Division, resulting in a published opinion or Rule 23 order. The appellate court continued, however, to see around 200 appeals filed. As with prior years, the Illinois Supreme Court issued one workers' compensation decision.

As far as new claims filed in 2014, 18,665 claims were filed in Chicago (which has one hearing site), while 25,068 (57 percent of the total) were filed among the 18 Downstate hearing sites. Of the Downstate filings, Zone 6 (Elgin, Geneva, Wheaton) reported the largest number – 5,054 claims filed, or 12 percent of the total - followed by Zone 1 (Collinsville/Belleville, Herrin, Mt. Vernon) – 4,699 claims or 11 percent of the total. The actual number of cases opened in FY 2014 equaled 45,533, up two percent from FY 2013, but off quite a bit from the 50,854 figure seen in FY 2010. The remaining Downstate Zones rank as follows: Zone 5 (Rockford, Waukegan, Woodstock) at 10 percent; Zone 2 (Quincy, Springfield, Urbana) at 9 percent; Zone 3 (Bloomington, Peoria, Rock Island) at 9 percent; and Zone 4 (Kankakee, New Lenox, Ottawa) at 8 percent.

Looking at the number of appeals, the statistics for FY 2014 reveal that fewer appeals are being filed. In FY 2014, 2,693 arbitration decisions were rendered, 52 percent of which were reviewed to the Commission. The Commission rendered 1,069 decisions, 26 percent of which were reviewed to the circuit court. Both percentages were down from FY 2013 and FY 2012. The circuit courts in FY 2014 issued 202 merits decisions, which then produced roughly 113 appellate court orders and opinions.

From a claimant perspective, although women constitute 47 percent of the Illinois workforce, only 35 percent of the claimants during FY 2014 were female. This was up, however, from a 1985 level of 22 percent. Even so, the report notes that only 3.2-3.5 percent of Illinois workers are injured per year. According to the NCCI Annual Statistical Bulletin 2014, Illinois experienced a frequency of injury per 100,000 workers of 3,201, which is lower than the national average of 3,491 injuries per 100,000 workers. Of these injuries, only one percent lost time from work. Illinois wages remained high at \$52,590 in average annual wages, which exceeded the national average of \$49,808. Compared to neighboring states, Illinois' average annual wage was even more pronounced, with Missouri at \$43,066, Wisconsin at \$42,777, Indiana at \$41,660, and Iowa at \$41,107. To compound this higher rate, the duration of TTD in Illinois (20.8 weeks) exceeded the duration rates of Indiana (11.8), Wisconsin (10.8), and Iowa (10.7).

THE RISE OF TEMPORARY TRANSITIONAL EMPLOYMENT (TTE)

By: Jessica Bell, jbell@heylroyster.com

The underlying purpose of the Workers Compensation Act – to return the employee to work – is often lost in the complexity of a workers' compensation case. It is easy to get caught up in "arising out of" and "in the course of" issues and issues of medical causation. Naturally, it is wise to review medical records and investigate any possibility that this alleged injury or condition pre-existed the work accident. Much time will be spent soliciting medical opinions to determine if treatment recommendations are appropriate and relates to the work injury.

One goal that we should strive for is to return an employee to work when he is medically released to do so in any capacity. Certainly it will be the primary concern of the arbitrator when the case eventually tried. Employers are likely to be better positioned to litigate the issue if they have addressed work restrictions throughout the claim and not just after a full release from medical care or right before arbitration.

Total Temporary Disability Benefits Generally

As a bit of background, an employee that sustains a compensable work-related injury is entitled to temporary total disability (TTD) benefits for such a period of time until his condition stabilizes and he is capable of returning to work in some capacity. This does not mean the employee has to be returned to full duty, but rather is capable of working even with restrictions. However, in order for an employer to rightfully suspend TTD benefits, the employer must be able to show that the employee is capable of working and that the employer has offered work to the employee within those capabilities. So, if an employee is still actively treating for his work injury but is released to return to work with some restrictions, the employer must continue TTD benefits unless they can accommodate those restrictions and return the employee to work. Considering the nature of some employment, returning an employee to work with any restrictions might be difficult. Add to that the fact that some restrictions can be fairly restrictive think sedentary duty only – and the issue becomes even more complex.

Temporary Transitional Employment

One tool that is being used with more frequency to address return to work complexities is temporary transitional employment (TTE). Often called "modified duty off-site" or simply "off-site return to work programs," these programs typically use a third party vendor to locate temporary employment for the employee when their work restrictions cannot be accommodated by their employer. These programs come into play during two pivotal points in the handling of a case: (1) when the employee is first released to return to work with some restriction but is still actively receiving treatment, and, (2) upon completing treatment, when the employee is released to return to work with permanent restrictions. In both instances, the employer cannot accommodate the employee's restrictions.

Returning an employee to work as soon as they are medically cleared to do so is in the best interests of both the employee and employer. The employer saves money as a result of no longer paying TTD benefits. If the employee returns to work for the employer, the employer also gains the productivity of the employee returning to the workplace. The employee benefits by remaining physically active during his continuing treatment, which, many physicians agree can help facilitate faster and better recovery from an injury. The employee also benefits psychologically by returning as a contributing member of the work force. The goal of returning the claimant to work must remain front and center.

So, how can employers utilize a temporary transitional employment program to best position themselves for claim resolution?

Prior to Filing of the Claim

The question of how to return an injured employee to work should be a concern for the employer before an injury even occurs. Although sometimes unavoidable, it is usually best to be proactive instead of reactive. Employers should consider having a policy specifically addressing return to work programs. If the employer's line of work allows flexibility to accommodate a wide range of restrictions, a statement in the employee handbook indicating that the employer will always attempt to accommodate restrictions upon receiving them from the employee could be included. If the employer wants to use TTE, more detailed information could be provided: (1) what employees are eligible; (2) whether participation is required as a term of employment; (3) how TTE would affect the employee's seniority; (4) whether a third party vendor may be used to arrange the employment, and so on. The agreement should outline the rights and responsibilities of the parties in a TTE situation. The employer should require the prospective employee review and sign the TTE policy upon accepting employment, and keep the signed policy with the employee's personnel file.

One of the most important concerns of arbitrators is the potential for an employee to be injured while working for the temporary employer. We need to be prepared to address that concern by being able to establish with whom responsibility lies in the event of an injury occurring in that TTE position. An argument can be made that the relationship between the employer and a temporary

employer is no different than a borrowing/lending employment arrangement as contemplated by Section 1(a) (4), which specifically addresses liability in the event of an injury. Because TTE is still relatively new, it is unclear how this issue will be handled at arbitration. However, if there is a signed agreement between the parties addressing liability in the event of an injury, that factor should go a long way towards addressing some of the concerns voiced by arbitrators in recent decisions.

Next, employers should research vendors who can arrange TTE. Here, it is critical that the vendor understand what is involved with properly utilizing TTE and the benefits to everyone of returning an employee to the workforce. Employers should work closely with the vendor to address important issues between the employer and the transitional employer such as who pays the employee's wages, who provides benefits (if there are any), who has liability in the event of an injury at the transitional employer's facility, and so on. Keep in mind that the vendor used to arrange TTE might eventually be required to testify at trial so their credibility and availability to testify in Illinois are critical. In a case recently decided by Arbitrator Kane, the workers' compensation insurance company used a vendor to arrange TTE. However, the vendor company was actually owned by the insurance company. The arbitrator discredited the vendor's employment specialist's testimony by noting there was a clear financial bias in the matter.

Release with restrictions while actively treating

Oftentimes, an employee will be released to return to work with certain medical restrictions, before they have concluded their treatment. If the employer cannot accommodate these restrictions, the employee is entitled to TTD benefits. One option is to start a vocational rehabilitation program to assist the employee in locating a position that can accommodate his temporary work restrictions. Normally, vocational rehabilitation counselors do not come into the picture until the employee concludes treatment and has permanent restrictions the employer cannot accommodate. In the case of a temporary position, the types of jobs the vocational expert would be finding could certainly be different - the claimant would likely argue it does not make sense for him to start a formal job at a place looking for a permanent position if they do not intend upon staying permanently. Some of the most common TTE facilities are non-for-profits such as Goodwill Industries and The Salvation Army. Perhaps the vocational

expert can arrange a temporary position with a business that often participates in a formal TTE program through a third party vendor. The potential benefit, however, of using the vocational expert to locate the job is clear – if the employee refuses to accept the position, the employer can justifiably suspend benefits for the employee's noncompliance with vocational rehabilitation. It will then be up to the arbitrator to determine if the suspension of benefits was permitted under the Act.

The offer of temporary employment must be a "bona fide" job offer. An arbitrator recently discredited a temporary employment position, determined it was not a bona fide offer, and awarded benefits by finding that the transitional employment position was not a "competitive job." In so finding, the arbitrator noted that the employee did not do anything to secure the position. Although the employee was "interviewed" for the position, the temporary employer was paid to conduct the interview and received a fee from the employer to accommodate the employee.

Release with permanent restrictions, treatment concluded

When the employee is released with permanent restrictions and the employer cannot accommodate the restrictions, vocational rehabilitation may be appropriate to assist the employee in securing a legitimate job in the current market that accommodates their restrictions. A vocational expert can assist the employee in preparing for the interview process and help locate potential jobs. That being said, it seems obvious that TTE would be a tough sell when the employee's restrictions are now permanent.

An arbitrator recently discredited a temporary employment position in a case where the employee was released from care with permanent restrictions. The employee presented evidence that there was no stable job market available for him and the employer relied on the TTE position a vendor had arranged for the employee. The arbitrator awarded permanent, total disability benefits, noting that the likelihood of the temporary job resulting in permanent employment was so slim, citing specific statistics to support his point, that he could not say the job was "competitive or real employment."

One consideration is to continue vocational rehabilitation to assist the employee in securing a more permanent position, but ask that he accept the temporary

position while the job search is ongoing. Considering the advantages to both parties by the employee working in some capacity, an arbitrator might be more willing to find an employee's refusal to attend TTE is non-compliance if the employer represents they are continuing to assist the employee in their permanent job search.

Overall, there is no specific evidence an employer can present to force an arbitrator to accept a temporary, transitional employment position in Illinois. As issues resolve and new ones arise, we will continue to stay on top of the trend to help you best use it in the defense of your Illinois claims.

TTE programs are springing up all across the country. Several states are even incorporating TTE programs into their statutory provisions, adding legitimacy and predictability to the overall concept.

If you have guestions on how to potentially use TTE on a current claim, or want to further discuss how to develop a TTE plan before an injury occurs, please call us.



Jessica Bell Peoria & Springfield Offices

Jessica focuses her practice on the defense of insurance clients and employers in workers' compensation matters. She joins

the firm with extensive workers' compensation defense experience, having appeared before the Illinois Workers' Compensation Commission representing employers and insurance companies across the state. Jessica also speaks directly with businesses to help assist in their understanding of the Workers' Compensation system, as well as the handling of claims within their business.

Congratulations to Joe Guyette



Joe Guyette was recently recognized by Central Illinois Business Magazine as one of "Forty Under 40" professionals in the area who exemplify great leadership abilities and a dedication to community service.

One of Joe's nominators, Dan Baker, the Director of Major and Planned Gifts for the Carle Foundation, summarized why Guyette was selected for this honor by saying, "Joe epitomizes what this award aims to recognize - which is outstanding achievement in one's professional field, in addition to philanthropic support of our community."

Baker went on to point out that Joe is a Steering Committee Member for Carle Core (which advances the efforts of Carle's Center on Philanthropy), he has been a program funding reviewer for the United Way since 2011, and he has actively helped the University YMCA raise money by volunteering for its annual "Dump and Run" program, in addition to coaching youth soccer and serving as a Boy Scout den leader.

Joe is a partner in the firm's Urbana office and concentrates his practice in the areas of workers' compensation defense, professional liability and employment matters. He devotes a portion of his practice to representing the firm's clients at depositions of plaintiffs and fact witnesses in asbestos personal injury matters. Joe has handled workers' compensation arbitration hearings at venues throughout the state, and has argued multiple cases before the Workers' Compensation Commission. He regularly handles depositions of expert witnesses and treating physicians in both civil and workers' compensation matters.

ILLINOIS WORKERS' COMPENSATION RATES

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TTD, DEATH, PERM. TOTAL & AMP. RATES

ACCIDENT DATE	MAX. RATE TTD, DEATH, PERM. TOTAL, AMP.	MIN. RATE DEATH, PERM. TOTAL, AMP.
7/15/10 to 1/14/11	1243.00	466.13
1/15/11 to 7/14/11	1243.00	466.13
7/15/11 to 1/14/12		473.03
1/15/12 to 7/14/12	1288.96	483.36
7/15/12 to 1/14/13	1295.47	485.80
1/15/13 to 7/14/13	1320.03	495.01
7/15/13 to 1/14/14		499.20
1/15/14 to 7/14/14	1336.91	501.34
7/15/14 to 1/14/15	1341.07	502.90
1/15/15 to 7/14/15	1361.79	510.67
7/15/15 to 1/14/16	1379.73	517.40

Death benefits are paid for 25 years or \$500,000 whichever is greater. As of 2/1/06, burial expenses \$8,000

MINIMUM TTD & PPD RATES

# of dependents,	7/15/07-	7/15/08-	7/15/09-	7/15/10-
including spouse	7/14/08	7/14/09	7/14/10	1/14/16
0	200.00	206.67	213.33	220.00
1	230.00	237.67	245.33	253.00
2	260.00	268.67	277.33	286.00
3	290.00	299.67	309.33	319.00
4+	300.00	310.00	320.00	330.00

MAXIMUM PERMANENT PARTIAL DISABILITY RATES

MAXIMUM 8(D)(1) WAGE DIFFERENTIAL RATE

7/1/08 to 6/30/09664.72	1/15/12 to 7/14/12966.72
7/1/09 to 6/30/10664.72	7/15/12 to 1/14/13971.60
7/1/10 to 6/30/11669.64	1/15/13 to 7/14/13990.02
7/1/11 to 6/30/12695.78	7/15/13 to 1/14/14998.40
7/1/12 to 6/30/13712.55	1/15/14 to 7/14/14
7/1/13 to 6/30/14721.66	7/15/14 to 1/14/15
7/1/14 to 6/30/15735.37	1/15/15 to 7/14/15
	7/15/15 to 1/14/161034.80

SCHEDULED LOSSES (100%)

	Effective 2/1/06 (and 7/20/05 to 11/15/05)		Effective 2/1/06 (and 7/20/05 to 11/15/05)
Person as a whole	500 wks	Amp at hip joint	215 wks 296 wks
Arm	253 wks	Amp above knee	242 wks
Amp at shoulder joint	323 wks		167 wks
Amp above elbow			38 wks
Hand		Other toes	13 wks
Repetitive carpal tunnel claims	190 wks	Haaring	
Benefits are capped at 15% loss of use of each a convincing evidence of greater disability, in whic loss of use of each affected hand.			215 wks
Thumb	76 wks	Eye	
Index	43 wks	Enucleated	173 wks
Middle	38 wks	One eye	162 wks
Ring	27 wks		
Little	22 wks	Disfigurement	162 wks

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Workers' Compensation Group

"We've Got the State Covered!"

ILLINOIS ZONE MAP



Kankakee • New Lenox • Ottawa

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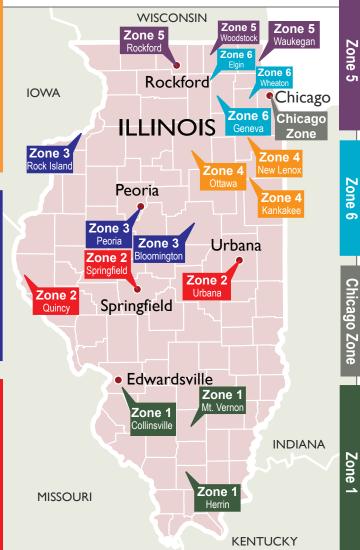
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