

# BELOW THE RED LINE

## WORKERS' COMPENSATION UPDATE "WE'VE GOT YOU COVERED!"

January 2024

### A WORD FROM THE PRACTICE CHAIR

Welcome to 2024! The holidays are behind us, and I very much hope that is also the case with the nasty weather which has been plaguing us. Sub-arctic temperatures, freezing rain, and gloomy skies can challenge the most hearty of us. So, I hope you made some great holiday memories with your friends and families in 2023 to get you through the remainder of the winter. Maybe making some spring break plans will help keep your mind focused on the sun and fun?! I hope you have transitioned smoothly from holiday/vacation to full work mode. However, I am sure there was a time after New Year's Eve when one of the more difficult tasks was remembering your password so you could log back into your computer and get back to work. We at Heyl Royster look forward to rolling up our sleeves and working with you in 2024!

We are proud to share some exciting changes the firm has undergone this year. [Tobin Taylor](#) has been named the firm's new managing partner, succeeding [Craig Young](#), who retired at the end of 2023 after four decades with the company. Additionally, [John Heil](#) has taken over as the managing partner of the Peoria office, while [Mike Denning](#) is now leading the Rockford office. [Renee Monfort](#) has become the managing partner of the Champaign office, and [Patrick Cloud](#) is set to take over the management of our Edwardsville office later this spring. [Theresa Powell](#) and [Rick Hunsaker](#) will continue

serving as managing partners of the Springfield and St. Louis offices. At Heyl Royster, we pride ourselves in our succession planning because of its importance to our longevity and building trust with our clients- not just for today but the foreseeable future. I wish our new leaders good luck in their positions at the firm. We are very excited about our future, and these team members will help us continue to grow our great firm and our proud tradition of exceeding our client's goals and expectations.

[Joe Rust](#) is kicking off 2024 with our first article on behalf of the Workers' Compensation Practice Group. Joe works under his mentor, [Brad Antonacci](#), in our Chicago office. Joe wears many hats regarding jurisdictions because he is licensed in Illinois, Iowa, and Wisconsin. He brings his excellent bank of knowledge to our workers' compensation team and enjoys jumping into a file and working hard to problem-solve for our clients. This month, Joe focuses his article on maintenance benefits, which may be owed when a claimant has reached maximum medical improvement but cannot return to work due to medical restrictions associated with the work injury. This article touches on the employer's obligations to provide maintenance benefits and strategies to employ when seeking to have maintenance benefits suspended for the claimant's failure to make good on their obligations.

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BY JOE RUST

**W**hat occurs after a claimant completes treatment, is placed at maximum medical improvement with permanent restrictions, and is unable to return to his regular job? In such a scenario, claimants will likely push for vocational rehabilitation. Before looking into how we can push back on paying for these benefits, below is a brief overview on vocational rehabilitation and maintenance benefits.

Under Section 8(a) of the Illinois Workers' Compensation Act, a claimant is generally entitled to vocational rehabilitation when a work-related injury causes a reduction in earning power and there is evidence that rehabilitation will increase his earning capacity 820 ILCS §305/8(a).

Section 8(a) of the Act permits an award of maintenance benefits while a claimant is engaged in a prescribed vocational rehabilitation program. An employer is obligated to pay maintenance benefits

only while a claimant is engaged in such a program. Thus, if the claimant is not engaging in some type of rehabilitation (whether it be physical rehabilitation, formal job training, or a self-directed job search) the employer's obligation to provide maintenance benefits is not triggered.

Vocational rehabilitation includes but is not limited to "counseling for job searches, supervising a job search program, and vocational retraining including education at an accredited learning institution." 820 ILCS §305/8(a). If a claimant cannot return to their pre-injury job, the employer must pay for "treatment, instruction, and training necessary for the physical, mental, and vocational rehabilitation of the employee," which includes payment of maintenance benefits. *Id.*

Maintenance benefits are calculated at a rate of two-thirds of the employee's average weekly wage. 820 ILCS §305/8(b)(1). If this sounds familiar, you're right - maintenance benefits are paid at the same rate

as Temporary Total Disability (TTD) benefits. While technically not TTD, maintenance benefits are paid at the same rate as TTD benefits while a claimant is undergoing vocational rehabilitation and pick up where TTD ceases – after a claimant reaches MMI but is unable to return to work.

Further, maintenance benefits are to be paid the entire time the injured worker is undergoing vocational rehabilitation. However, the burden will be on claimant to prove maintenance benefits should continue. The claimant has a responsibility to cooperate with the vocational program and attempt to return to employment. Non-compliance with rehabilitation may be cause for maintenance benefits to be reduced or terminated. A few cases highlighted herein illustrate when an employer can suspend or cease paying maintenance benefits.

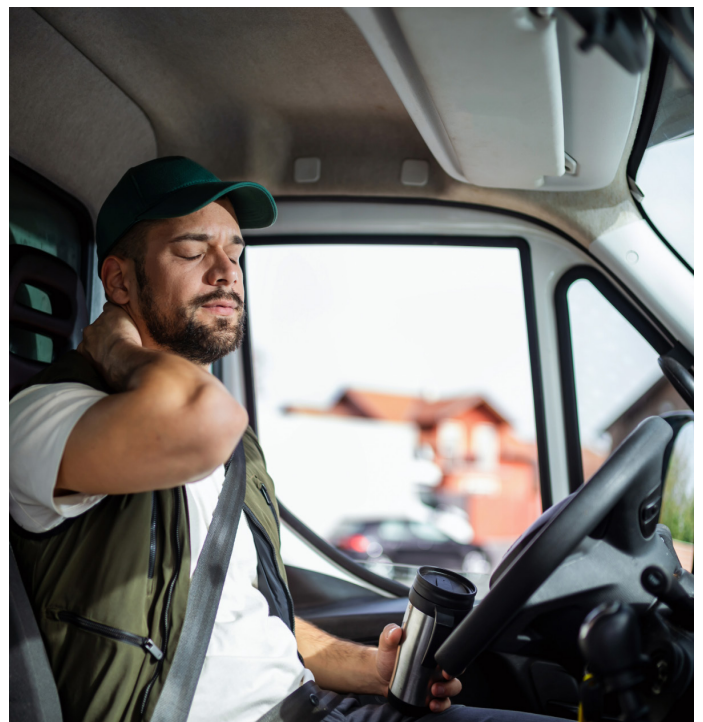
In *Peoplease Corp. v. Illinois Workers' Comp. Comm'n*, the claimant suffered injuries to his neck, back, and bilateral shoulders while working as a truck driver for the employer. 2015 IL App (1st) 141960WC-U. In short, claimant was placed at MMI by his treating physician on August 17, 2009; almost a year after his injury. *Id.* ¶ 17. He underwent a Functional Capacity Evaluation, which determined he was able to perform work at a light physical demand level. *Id.* ¶ 16. His physician imposed permanent restrictions based upon the FCE. The permanent restrictions prohibited the employee from returning to work as a truck driver and reduced his earning power. The Arbitrator found he was temporarily and totally disabled from November 14, 2008 until August 17, 2009. *Id.* ¶ 29.

On appeal, the claimant argued while he was not owed TTD after the date he reached MMI, but he was entitled to maintenance benefits after that date. *Id.* ¶ 42. While the appellate court could have simply dismissed this argument as claimant did not raise a claim for maintenance benefits until the appeal, the

Court provided a good illustration on why claimant would not have been entitled to maintenance benefits even though he could not return to his position as a truck driver, which caused a reduction in his earning power. *Id.* ¶¶ 43-47.

Ultimately, the Court outlined the employer is obligated to pay maintenance benefits only “while a claimant is engaged” in a vocational rehabilitation program. *Id.* ¶ 44. Further, the Court held that there must be evidence that vocational rehabilitation would have increased claimant’s earning capacity. *Id.* ¶ 46. In *Peoplease*, there was no evidence claimant engaged in a good faith job search after he was placed at MMI. *Id.* ¶ 23. In fact, he never even sought his job back with the employer or asked for an accommodation within his restrictions. *Id.* ¶ 44.

Similarly, in *Beverage v. Illinois Workers' Comp. Comm'n*, the appellate court held claimant was not entitled to over three years of maintenance benefits



because he did not participate in a self-directed job search or vocational rehabilitation program. 2019 IL



App (2d) 180090WC. This case also involved a sales supervisor that suffered injuries to his back and right hip at work, with a possible pre-existing condition. *Id.* ¶¶ 4-9. Surgery was recommended, although claimant declined to undergo the procedure, and therefore, his treating physician released him from care with permanent light duty restrictions including



no commercial driving. *Id.* ¶ 13. TTD was awarded for the period claimant was unable to work before reaching MMI. *Id.* ¶ 20.

The arbitrator also awarded maintenance benefits so long as claimant was actively looking for work or participating in vocational rehabilitation. *Id.* Yet, during most of the time for which the sales supervisor claimed maintenance benefits, he did not actively look for work. The appellate court affirmed the circuit court decision to set aside the Commission's decision to award maintenance benefits, finding the record did not show the claimant participated in a vocational rehabilitation program or a self-directed job search over a three-year period, he did not demonstrate an intention to return to work, and he did not prove a reduction in her earning capacity after termination. *Id.* ¶¶ 22-30.

*Peoplease* and *Beverage* illustrate the burden placed on claimants to receive maintenance benefits. However, it is crucial for employers to stay on top of

claimants for proof they are entitled to maintenance benefits and further that they are entitled to continuing benefits. If claimant is not actively searching for a job or participating in vocational rehabilitation, the employer has a basis to suspend maintenance benefits. As shown in the cases above, maintenance benefits are owed only while claimants are actively engaged in vocational rehabilitation programs.

The attorneys in the workers' compensation practice group at Heyl Royster have extensive experience investigating and defending workers' compensation claims in Illinois. If you need assistance or advice relating to any aspect of a workers' compensation claim, do not hesitate to reach out to one of our attorneys.



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WHEN EXPERIENCE MATTERS

If your business, organization, or you as an individual need premier defense services from an industry-leading workers' compensation defense firm, the dedicated legal minds at Heyl Royster are ready to provide you with the legal advice and legal services that you deserve. From complex claims to disputes, causation, and more, our workers' compensation attorneys are experienced litigators ready to come to your defense.

Heyl Royster Is Ready To  
Defend You

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### Joseph Rust III



#### **Associate in Chicago, IL**

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- Workers' Compensation

***Thoroughly investigating a claim at the outset and continually re-assessing information learned through discovery, Joe provides an honest assessment to his clients on the best path forward for their case.***

Joe serves clients throughout the Midwest, including personal injury defense, commercial litigation, trucking defense, medical malpractice, and Workers' Compensation. As an Associate in the firm's Chicago office, he is a strong advocate, thoroughly investigating a claim at the outset and continually re-assessing information learned through discovery. Joe provides an honest assessment to his clients on the best path forward. Together, they will decide whether to discuss an early opportunity for settlements, build a case for a summary judgment motion, or take the case to trial.

In his time at Heyl Royster, Joe has represented clients in alternative dispute resolution, including mediations, settlement conferences, and arbitrations. He has deposed countless plaintiffs, experts, treating physicians, co-defendants, and witnesses. Additionally, he has tried numerous cases, including personal injuries and contractual disputes.

When not practicing law, Joe enjoys spending time with his wife and daughter and their dog, golfing, reading, and experiencing all the Windy City has to offer.

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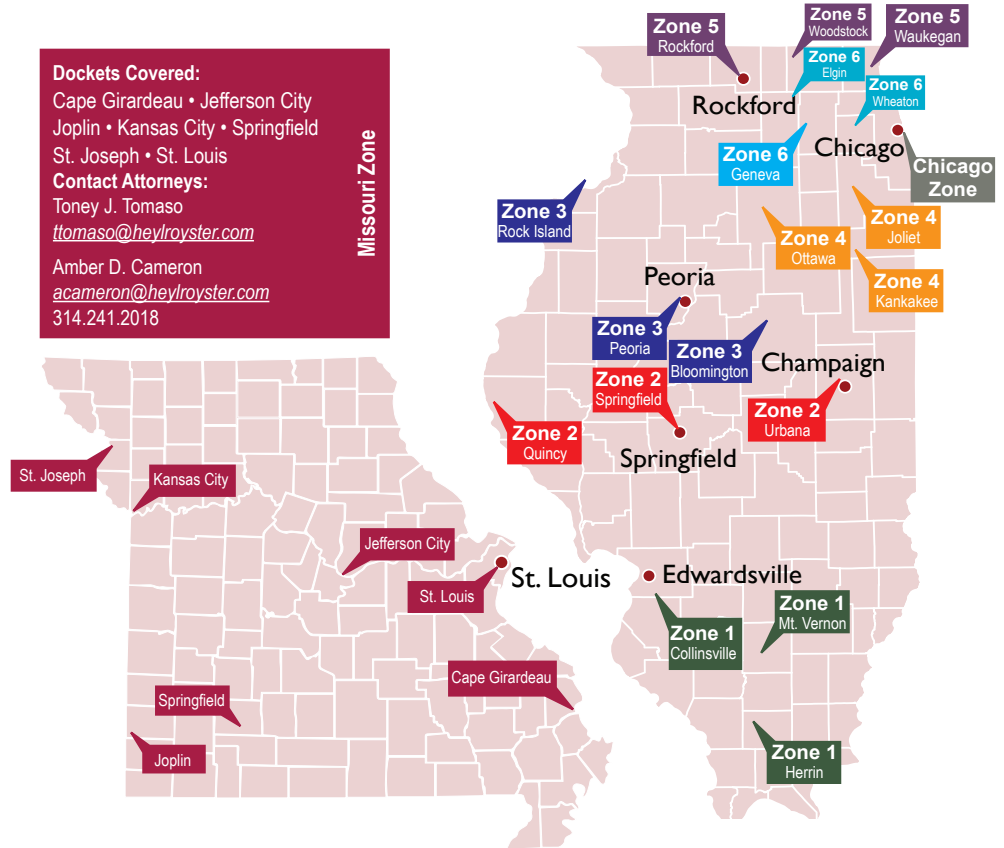
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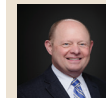


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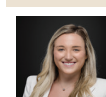
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