

BELOW THE RED LINE

HEYL...
ROYSTER

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

A Newsletter for Employers and Claims Professionals

September 2018

A WORD FROM THE PRACTICE CHAIR

I do hope this note finds you all well and enjoying Fall 2018. Let the cool air in by opening up the window and enjoy! You really cannot beat this time of year. The kids are back to school; baseball playoffs are right around the corner; tailgating and football games are back; Homecoming celebrations abound; and don't forget to go pick out your favorite pumpkin and a costume for Halloween, which will be here before you know it. Those lazy Summer days are over. We have so much to do, and let's not forget our shared passion for claims handling in the wonderful world of workers' compensation! Where do we find the time to do all of this? Well, it's tough, but so very worthwhile.

I want to thank my partners John Flodstrom and Joe Guyette (both from the Champaign office) for their article on the intersection we need to be aware of between Workers' Compensation and the American with Disabilities Act (ADA). Their insight as to the latest case law on point and the shared practice pointers to avoid inherent pitfalls will surely be invaluable to you and your Team.

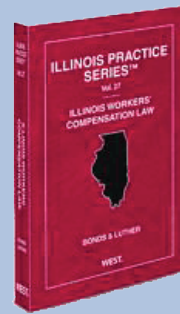
If you have any questions or concerns you would care to discuss, do not hesitate to contact me. As always, the Heyl Royster workers' compensation Team is ready and excited to meet your needs in Illinois and Missouri. If you want to discuss a proposed date for members of our Team to come and work with you as part of our house-calls / presentations, then let's talk and get something set up. We are here for you and we want to help make your workers' compensation claims handling and file management go better.



Toney J. Tomaso
Workers' Compensation Practice Chair
ttomaso@heyloyroyster.com



New 2018-2019 Edition Available



Bruce Bonds and **Kevin Luther** co-authored the recently released "Illinois Workers' Compensation Law, 2018 Edition," Volume 27 of the Illinois Practice Series published by Thomson Reuters. This publication provides an up-to-date assessment of Illinois workers' compensation law in

a practical format that is useful to practitioners, adjusters, arbitrators, commissioners, judges, lawmakers, students, and the general public. It also contains a summary of historical developments of the Illinois Workers' Compensation Act.

Mr. Bonds concentrates his practice in the areas of workers' compensation, third-party defense of employers, and employment law. He is a member of the Illinois Workers' Compensation Commission's Rules Review and Revisions Committee and an adjunct professor of law at the University of Illinois College of Law, where he has taught workers' compensation law to upper-level students since 1998. Mr. Luther supervises the employment law, employer liability, and Workers' Compensation practices in the firm's Rockford and Chicago offices. He has represented numerous employers before the Illinois Human Rights Commission, arbitrated hundreds of workers' compensation claims, and tried numerous liability cases to jury verdict.

HEYL ROYSTER WORKERS' COMPENSATION UPDATE

September 2018

Editors, Brad Elward and Lynsey Welch

SEVERSON V. HEARTLAND WOODCRAFT, INC. – CAN A LIGHT DUTY PROGRAM FOR WORKERS' COMPENSATION CLAIMANTS CREATE A DUTY TO ACCOMMODATE UNDER THE ADA?

By John Flodstrom and Joe Guyette (Champaign)

One of the most common challenges facing employers in Illinois workers' compensation claims is preventing or minimizing exposure for disability benefits while an employee is recuperating from a work related injury. If the employee has a complete work restriction, temporary total disability (TTD) is owed under 820 ILCS 305/8(b). If the employee has light duty restrictions, the employer can avoid having to pay TTD by offering light duty work within the restrictions. Light duty work is further beneficial for the employer because it breaks the disability cycle and allows the employer to maintain contact with the employee. From the employee's standpoint, light duty can be helpful and therapeutic because it keeps the employee active and can often lead to a return to full duty activities. By all accounts, offering light duty work is an effective approach to managing a workers' compensation claim.

Illinois employers are also required to comply with certain federal laws such as the Americans with Disabilities Act, 42 USC § 12101 (ADA). The ADA makes it illegal for an employer to discriminate against a "qualified individual on the basis of disability." 42 USC § 12112(a). A "qualified individual" is defined as "an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 USC § 12111(8).

Below is a discussion of *Severson v. Heartland Woodcraft, Inc.*, 872 F.3d 476 (7th Cir. 2017), a relatively recent decision that explores the potential interaction between the Illinois Workers' Compensation Act and the ADA.

Severson v. Heartland Woodcraft, Inc.

Severson is a Seventh Circuit Court of Appeals case that involved a Wisconsin employer, but the decision is applicable to Illinois employers, as Illinois falls within the jurisdiction of the seventh circuit. The plaintiff, Severson, had a long history of non-work related back problems. He had degenerative conditions in his spine that would flare up from time to time and cause problems at work. Ultimately, Severson decided to undergo back surgery and submitted paperwork to take time off pursuant to the Family Medical Leave Act (FMLA) for the maximum period of 12 weeks. When his FMLA benefits expired, Heartland Woodcraft terminated Severson's employment and invited him to reapply when he recovered from the surgery and was cleared to return to work. A few months later, Severson's physicians cleared him to return to work without restrictions. Rather than reapplying at Heartland, Severson sued Heartland for an alleged violation of the ADA for failing to accommodate his physical disability.

The district court granted Heartland's motion for summary judgment and the decision was affirmed by the seventh circuit. The gist of the seventh circuit's ruling is that the ADA cannot be used to protect an employee who is under a complete work restriction for purposes of FMLA. The ADA is intended to apply to individuals who are able to do some work in a limited capacity. Severson did not have a viable claim under ADA because a lengthy leave of absence is beyond the scope of a reasonable accommodation as anticipated by the ADA.

The significance of the *Severson* case in the workers' compensation arena is that it includes an extraneous discussion about whether an employer is obligated to accommodate an employee under the ADA in situations where the employer has a policy of offering light duty work to employees with work related injuries and restrictions.

HEYL ROYSTER WORKERS' COMPENSATION UPDATE

September 2018

Editors, Brad Elward and Lynsey Welch

The *Severson* court noted that an employer "need not create a light duty position for a non-occupationally injured employee with a disability as a reasonable accommodation." *Severson*, 872 F.3d at 482 (citing *EEOC Enforcement Guidance: Workers' Compensation and the ADA*, 2 EEO Compliance Manual, (CCH) Section 6905 at 5394 (September 3, 1996)). Significantly, the court went on to say,

On the other hand, if an employer has a policy of creating light-duty positions for employees who are occupationally injured, then that same benefit ordinarily must be extended to an employee with a disability who is not occupationally injured unless the company can show undue hardship.

Severson, 872 F. 3d at 482.

The above statement is of concern for Illinois employers because if they are in the practice of creating light duty positions for employees with work related injuries, the *Severson* holding can be interpreted as requiring them to make the same light duty work available to employees with non-occupational injuries.

The *Severson* court noted that Heartland did not have a policy of providing light duty work to its employees with work related injuries. At most, a few employees had been given temporary work on a short term, *ad hoc* basis, when available. There was no evidence of a formal policy of light duty work for employees who were hurt on the job. Thus, under the specific facts discussed in *Severson*, the employer had no obligation to offer light duty work to employees such as *Severson* with non-occupational injuries and restrictions. Employers can also take comfort in the fact the *Severson* court acknowledged that an employer should not be punished for attempting to accommodate employees with a light duty restriction. There is also potential relief for the employer if it can demonstrate "undue hardship."

Illinois employers should take note of the *Severson* decision when offering light duty work to employees with work related injuries. If the employer establishes a formal program of light duty work in such instances, the ADA could require the employer to offer the same light duty work to employees with non-occupational injuries. The *Severson* case can also put employers in a Catch 22 where the workers' compensation claim is denied. An employee with a workers' compensation claim and light duty restrictions could make a demand on the employer for light duty work. If this request is rejected because the workers' compensation claim has been denied, the employee can then make an alternative request for a light duty accommodation under the ADA. Under *Severson*, the employer could be seen as having to accommodate the light duty restriction under either scenario assuming there is a light duty program in place for employees with work related injuries.

Practice Tips in Light of *Severson*

The *Severson* ruling may cause Illinois employers to balance their desire to offer light duty work to employees with work related injuries with the concern of running afoul of ADA with regard to employees with non-occupational injuries. The court's opinion in *Severson* gives us some guidance as to how to manage this. For one thing, it is a good idea to not have a formal, written policy in place of offering light duty work to employees with work related injuries. The employer in *Severson* was found not to be in violation of the ADA because it used an informal, *ad hoc* arrangement for placing injured workers at light duty. Employers are advised to follow an informal, individualized approach in offering light duty to employees with work related injuries. Light duty job offers should be made on a temporary, case by case basis.

The *Severson* case is more of a concern for larger employers that have a written and/or longstanding

HEYL ROYSTER WORKERS' COMPENSATION UPDATE

September 2018

Editors, Brad Elward and Lynsey Welch

policy of offering light duty work to employees with occupational injuries. If these employers intend to maintain such a policy, they will have to be mindful of the consequences under the *Severson* case and the ADA. Employers that choose to maintain a policy of accommodating light duty restrictions for employees with occupational injuries have to make similar accommodations with non-occupational injuries.

John Flodstrom – Champaign Office



John devotes a significant portion of his practice to the defense of employers in Illinois workers' compensation cases. John has tried well in excess of 100 cases before various Workers' Compensation Commission arbitrators.

John is also involved in civil litigation, where much of his work entails defending employers in third party cases. In addition to being a frequent lecturer on workers' compensation issues, John has written several articles on various aspects of workers' compensation and has also provided in-house training to firm clients.

Joe Guyette – Champaign Office



Joe concentrates his practice in the areas of workers' compensation defense, professional liability and employment matters. Joe has taken several bench and jury trials to verdict, and has drafted and argued numerous dispositive motions. Joe has handled workers' compensation arbitration hearings at venues throughout the state, and has argued multiple cases before the Workers' Compensation Commission. Joe is also licensed in Indiana.

HEYL... ROYSTER

Contact Attorney:

Brad A. Antonacci
brantonacci@heyloyroyster.com
Kevin J. Luther
kluther@heyloyroyster.com
312.971.9807

Chicago Zone

Dockets Covered:

Elgin • Geneva • Wheaton

Contact Attorney:

Kevin J. Luther
kluther@heyloyroyster.com
815.963.4454

Zone 6

Dockets Covered:

Rockford • Waukegan • Woodstock

Contact Attorneys:

Kevin J. Luther
kluther@heyloyroyster.com
Lynsey A. Welch
lwelch@heyloyroyster.com
815.963.4454

Zone 5

Dockets Covered:

Kankakee • New Lenox • Ottawa

Contact Attorney:

Kevin J. Luther
kluther@heyloyroyster.com
815.963.4454

Zone 4

Dockets Covered:

Bloomington • Rock Island • Peoria

Contact Attorney:

Craig S. Young
cyoung@heyloyroyster.com
309.676.0400

Zone 3

Dockets Covered:

Quincy • Springfield • Urbana

Contact Attorney:

Bruce L. Bonds
bbonds@heyloyroyster.com
217.344.0060

Zone 2

Dockets Covered:

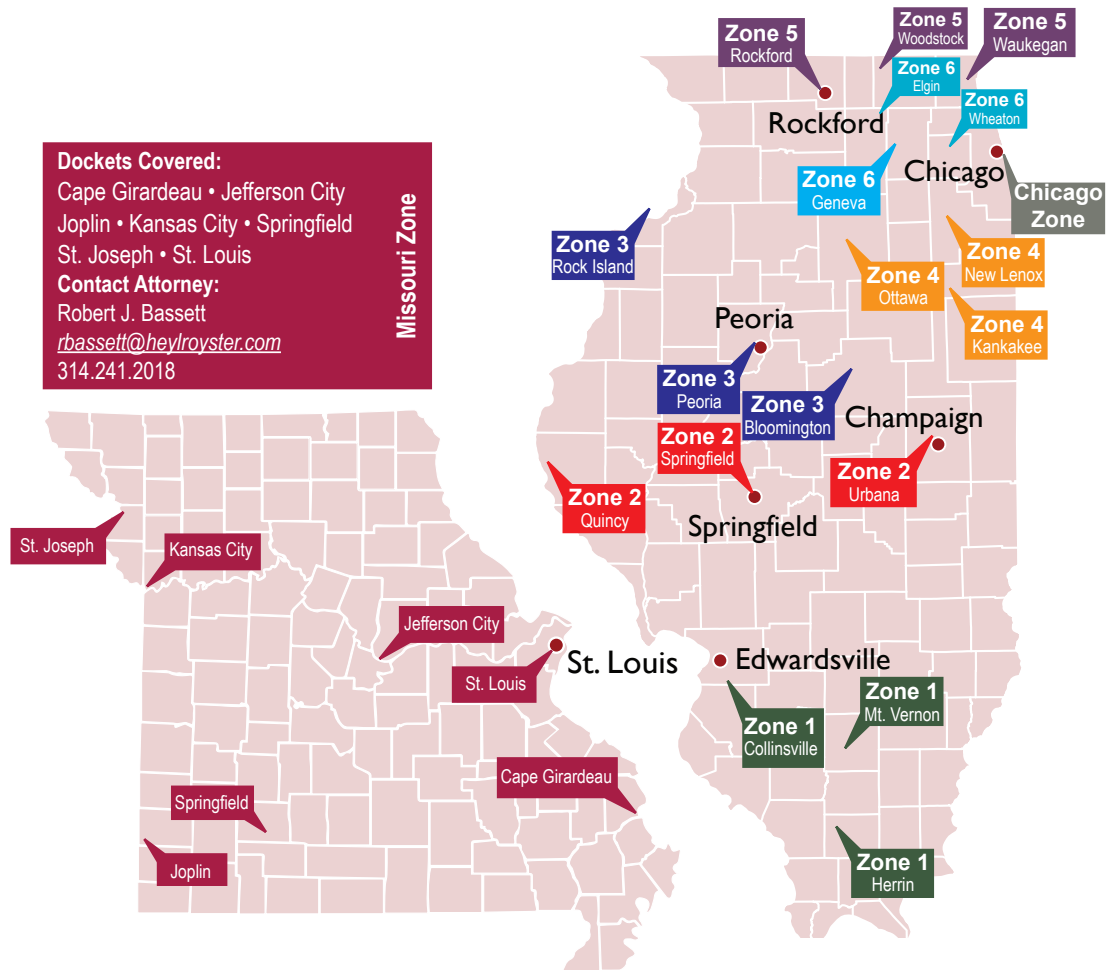
Collinsville • Herrin • Mt. Vernon

Contact Attorneys:

Toney J. Tomaso
ttomaso@heyloyroyster.com
618.656.4646

Zone 1

REGIONAL ZONE MAPS



Workers' Compensation Practice Chair

Contact Attorney:

Toney Tomaso - ttomaso@heyloyroyster.com
217-344-0060

Workers' Compensation Appellate

Brad A. Elward - belward@heyloyroyster.com
Patricia L. Hall - phall@heyloyroyster.com
309-676-0400

State of Wisconsin

Contact Attorney:

Kevin J. Luther - kluther@heyloyroyster.com
815-963-4454

Jones Act Claims

Contact Attorney:

Ann Barron - abarron@heyloyroyster.com
618-656-4646

OFFICE LOCATIONS

Champaign

301 N. Neil St.
Suite 505
PO Box 1190
Champaign, IL
61803
217.344.0060

Chicago

33 N. Dearborn St.
Seventh Floor
Chicago, IL
60602
312.853.8700

Edwardsville

105 W. Vandalia St.
Mark Twain Plaza III
Suite 100
PO Box 467
Edwardsville, IL
62025
618.656.4646

Peoria

300 Hamilton Blvd.
PO Box 6199
Peoria, IL
61601
309.676.0400

Rockford

120 W. State St.
Second Floor
PO Box 1288
Rockford, IL
61105
815.963.4454

Springfield

3731 Wabash Ave.
PO Box 9678
Springfield, IL
62791
217.522.8822

St. Louis

701 Market St.
Peabody Plaza
PO Box 775430
St. Louis, MO
63177
314.241.2018

WWW.HEYLROYSTER.COM

WORKERS' COMPENSATION PRACTICE GROUP

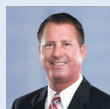


Practice Group Chair

Toney Tomaso

ttomaso@heyloyroyster.com

Champaign Office



Contact Attorney:

Bruce Bonds

bbonds@heyloyroyster.com



John Flodstrom

jflodstrom@heyloyroyster.com



Joseph Guyette

jguyette@heyloyroyster.com



Bradford Peterson

bpeterson@heyloyroyster.com



Toney Tomaso

ttomaso@heyloyroyster.com

Peoria Office



Contact Attorney:

Craig Young

cyoung@heyloyroyster.com



Bradford Ingram

bingram@heyloyroyster.com



Dana Hughes

dhughes@heyloyroyster.com



James Manning

jmanning@heyloyroyster.com



Jessica Bell

jbelle@heyloyroyster.com



Brad Elward

belward@heyloyroyster.com

Chicago Office



Contact Attorney:

Brad Antonacci

bantonacci@heyloyroyster.com



Kevin Luther

kluther@heyloyroyster.com



Lynsey Welch

lwelch@heyloyroyster.com



Fallon Sommerfeld

fsommerfeld@heyloyroyster.com

Rockford Office



Contact Attorney:

Kevin Luther

kluther@heyloyroyster.com



Lynsey Welch

lwelch@heyloyroyster.com



Patricia Hall

phall@heyloyroyster.com



Jordan Emmert

jemmert@heyloyroyster.com



Scott Hall

shall@heyloyroyster.com

St. Louis Office



Contact Attorney:

Bob Bassett

rbassett@heyloyroyster.com



Toney Tomaso

ttomaso@heyloyroyster.com



Amber Cameron

acameron@heyloyroyster.com

Edwardsville Office



Contact Attorney:

Toney Tomaso

ttomaso@heyloyroyster.com



John Flodstrom

jflodstrom@heyloyroyster.com



Amber Cameron

acameron@heyloyroyster.com

Springfield Office



Contact Attorney:

Dan Simmons

dsimmons@heyloyroyster.com



John Langfelder

jangfelder@heyloyroyster.com



Jessica Bell

jbelle@heyloyroyster.com



Brett Siegel

bsiegel@heyloyroyster.com



AJ Sheehan

ajsheehan@heyloyroyster.com

Below is a sampling of our practice groups highlighting a partner who practices in that area – For more information, please visit our website
www.heyloyster.com



Appellate Advocacy

Craig Unrath
cunrath@heyloyster.com



Business and Commercial Litigation

John Heil
jheil@heyloyster.com



Business Organizations & Transactions

Ken Davies
kdavies@heyloyster.com



Casualty/Tort Litigation

Nick Bertschy
nbertschy@heyloyster.com



Civil Rights Litigation/Section 1983

Keith Fruehling
kfruehling@heyloyster.com



Construction

Mark McClenathan
mmcclenathan@heyloyster.com



Employment & Labor

Brad Ingram
bingram@heyloyster.com



Governmental

Andy Keyt
akeyt@heyloyster.com



Healthcare

Roger Clayton
rclayton@heyloyster.com



Insurance Services

Patrick Cloud
pcloud@heyloyster.com



Long Term Care/Nursing Homes

Tyler Robinson
trobenson@heyloyster.com



Product Liability

Rex Linder
rlinder@heyloyster.com



Professional Liability

Renee Monfort
rmonfort@heyloyster.com



Railroad Litigation

Steve Heine
sheine@heyloyster.com



Toxic Torts & Asbestos

Lisa LaConte
llaconte@heyloyster.com



Trucking/Motor Carrier Litigation

Matt Hefflefinger
mhefflefinger@heyloyster.com



Workers' Compensation

Toney Tomaso
ttomaso@heyloyster.com



Scan this QR Code
for more information about
our practice groups and attorneys

Champaign

301 N. Neil St.
Suite 505
PO Box 1190
Champaign, IL
61803
217.344.0060

Chicago

33 N. Dearborn St.
Seventh Floor
Chicago, IL
60602
312.853.8700

Edwardsville

105 W. Vandalia St.
Mark Twain Plaza III
Suite 100
PO Box 467
Edwardsville, IL
62025
618.656.4646

Peoria

300 Hamilton Blvd.
PO Box 6199
Peoria, IL
61601
309.676.0400

Rockford

120 W. State St.
Second Floor
PO Box 1288
Rockford, IL
61105
815.963.4454

Springfield

3731 Wabash Ave.
PO Box 9678
Springfield, IL
62791
217.522.8822

St. Louis

701 Market St.
Peabody Plaza
PO Box 775430
St. Louis, MO
63177
314.241.2018