

Workers' Compensation Law



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Purpose



- The purpose of the workers' compensation laws is to provide expedited benefits as compared to civil litigation.
- The fault or negligence of the employer is not an issue.
- The fault or negligence of the employee is not an issue.

Workers' Compensation Laws



- The workers' compensation laws are a combination of several Iowa Code Chapters, the Iowa Administrative Code, and case law.
- The workers' compensation laws are a separate and independent body of law governing the rights and liabilities of workers and employers when the employee is injured at work.

Exclusive Remedy



- The workers' compensation laws provide the only remedy for an employee injured at work.
- An insured employer cannot be sued in a civil action.
- A co-employee can be sued in a civil action for gross negligence under Iowa Code Section 85.20.
- An injured employee may sue third parties for their negligence; however the employer or employer's insurer shall be indemnified out of the recovery of damages to the extent of the payment made under Iowa Code Section 85.22.

Compensability



- 1 - Iowa must have jurisdiction.
- 2 - An employer-employee relationship must exist.
- 3 - An injury must occur.
- 4 – The injury must arise out of and occur in the course of the employment.

Jurisdiction



- The Workers' Compensation Commissioner has subject matter jurisdiction over all injuries occurring in the State of Iowa and the employer can be sued here as long as Section 85.3 of the Code is satisfied.
- Iowa Code Section 85.71 addresses jurisdiction for injuries occurring outside the State of Iowa.
- Section 85.71(a) was recently amended, removing jurisdiction when “the employer has a place of business in this state and the employee is domiciled in this state.”

Employer-Employee Relationship



- Iowa Code Section 85.61(11) defines a “worker” or “employee” as “a person who has entered into the employment of, or works under contract of service, express or implied, or apprenticeship, for an employer.”
- This Section also lists specific types of individuals included within the meaning of “employee” and excluded from the meaning of “employee.”

Independent Contractor



- Independent Contractor v. Employee
- The overriding issue is the intention of the parties.
- Other factors to be considered in determining whether an employer-employee relationship exist include:
 - The right of selection or to employ at will;
 - Responsibility for payment of wages by the employer;
 - The right to discharge or terminate the relationship;
 - The right to control the work; and
 - The identity of the employer as the authority in charge of the work or for whose benefit it is performed.

Injury



- “A personal injury...means injury to the body, the impairment of health,...which comes about, not through the natural building up and tearing down of the human body, but because of a traumatic or other hurt or damage to the health or body of an employee.” Almquist v. Shenandoah Nurseries, 254 N.W. 35 (Iowa 1934).

Injury



- **Traumatic**

- An injury based on a specific accident or incident out of the ordinary, as it relates to the employment.

- **Cumulative**

- An injury which takes place over a period of time and develops gradually, based on repeated impacts or motions.

Date of Injury

- **Traumatic**

- The date of the event.

- **Cumulative**

- The general rule is that the date of injury is the time when the disability “manifests” itself.
- Manifestation is defined as the time when the fact of the injury and the causal relationship to the employment would be plainly apparent to a reasonable person.

In the Course of Employment



- An injury occurs in the course of employment when it is within the period of employment, at a place where the employee reasonably may be performing duties, and while actually fulfilling those duties or engaged in doing something incidental to the work duties.
- Generally when an employee is furthering the employer's business and the employee sustains an injury, it is considered to be in the course of the employment.
- An injury that occurs on the employer's premises during the employee's hours of employment will almost always be considered in the course of the employment.
- Injuries that occur to employees whose services are being performed on, in, or about the premises which are occupied, used, or controlled by the employer, and also injuries to those who are engaged elsewhere in places where their employer's business requires their presence and subjects them to dangers incident to the business are normally considered to be in the course of employment.

Going and Coming Rule



- For employees with a fixed time and place of employment, injuries occurring off of the employer's premises are generally not compensable.
- However, there are numerous exceptions which are factually driven.
 - Company car
 - Employee must travel as part of his/her work
 - Dual purpose for the trip
 - The employee's home is a work site
 - Employee traveling from one work site to another
 - Zone of danger

Arising Out of the Employment



- “Arising out of” involves the idea of a causal relationship between the employment and the injury.
- Factually the injury must result from an actual risk associated with the employment.
- The injury must not have coincidentally occurred while at work, but must be caused or related to the working environment or the conditions of the employment.

Arising Out of the Employment



- Medically, causation is established by showing that the work injury caused the condition complained of or aggravated, accelerated, or lighted up a pre-existing condition.
- Causation is generally decided by expert testimony.
- The physicians must establish causation by a probability; certainty regarding causation is not required.
- A cause is sufficient if it is a substantial factor in bringing about the condition complained of; it only needs to be one of the substantial causes, it does not have to be the only cause.
- An aggravation must be more than a slight aggravation, it must be a significant or substantial aggravation.

Mental-mental Injuries



- Psychological injuries resulting from purely mental and no physical stimuli are compensable.
- In order to be compensable, the employee must show:
 - Medical causation: the stress must actually cause the psychological condition.
 - Legal causation: the workplace stress is of greater magnitude than the day-to-day mental stresses experienced by other workers employed in the same or similar jobs, regardless of their employer.

Statutory Defenses – Statute of Limitations



- **Iowa Code Section 85.26**
 - Two years from the date of injury.
 - If weekly benefits were paid, three years from the date of the last payment of weekly benefits.
- **Discovery Rule:** the statute of limitations does not begin to run until the claimant also knows that the condition is serious enough to have a permanent adverse effect on the claimant's employment or employability.

Statutory Defenses – 90 Day Notice



- Iowa Code Section 85.23
- Discovery Rule: 90 Day Notice does not begin to run until the claimant is aware of the seriousness and compensable nature of his/her injury.
- Added language: “For the purposes of this section, ‘date of the occurrence of the injury’ means the date that the employee knew or should have known that the injury was work-related.”

Statutory Defenses – Willful Injury-Intoxication



- Iowa Code Section 85.16
 - No compensation for injuries caused by:
 - ✦ The employee's willful intent to injure the employee's self or another.
 - ✦ The employee's intoxication.
 - ✦ The willful act of a third party directed against the employee for reasons personal to the employee.

Statutory Defenses - Intoxication



- Iowa Code Section 85.16(2): No compensation allowed for an injury caused “by the employee’s intoxication, which did not arise out of and in the course of employment but which was due to the effects of alcohol or another narcotic, depressant, stimulant, hallucinogenic, or hypnotic drug not prescribed by an authorized medical practitioner, *if the intoxication was a substantial factor in causing the injury.*” (emphasis added).

Statutory Defenses - Intoxication



- Language added to 85.16(2):

b. For the purpose of disallowing compensation under this subsection, both of the following apply:

(1) If the employer shows that, at the time of the injury or immediately following the injury, the employee had positive test results reflecting the presence of alcohol, or another narcotic, depressant, stimulant, hallucinogenic, or hypnotic drug which drug either was not prescribed by an authorized medical practitioner or was not used in accordance with the prescribed use of the drug, it shall be presumed that the employee was intoxicated at the time of the injury and that intoxication was a substantial factor in causing the injury.

(2) Once the employer has made a showing as provided in subparagraph (1), the burden of proof shall be on the employee to overcome the presumption by establishing that the employee was not intoxicated at the time of the injury, or that intoxication was not a substantial factor in causing the injury.

Horseplay



- Horseplay does not arise out of and in the course of employment.
- Horseplay will preclude workers' compensation benefits when the claimant substantially deviates from the employment.
- Factors to consider:
 - The extent of the seriousness of the deviation.
 - The completeness of the deviation.
 - The extent to which the practice of horseplay had become an accepted part of the employment.
 - The extent to which the nature of the employment may be expected to include some such horseplay.

Benefits



- Iowa workers' compensation law provides for the following types of benefits:
 - Medical expenses and mileage reimbursement for medical visits
 - Temporary total disability/healing period benefits
 - Temporary partial disability benefits
 - Permanent total disability benefits
 - Vocational rehabilitation benefits
 - Death benefits
 - Second Injury Fund benefits
 - Penalty benefits

Medical Benefits



- Iowa Code Section 85.27 - Once an employer and insurance carrier accept a claimant's injury as compensable they are obligated to provide reasonable and necessary medicals for the evaluation and treatment of the compensable injuries, including reasonably necessary transportation expenses for such services.
- If the claim is accepted as compensable, the employer and insurance carrier have the right to select the treating physicians.
- An employee may seek alternative medical care if they are dissatisfied with the care provided by the employer. The reason for the dissatisfaction must be communicated to the employer prior to filing a petition for alternate medical care. If the parties cannot agree on an alternative provider, the commissioner may order alternate care. The employee must show the care was not offered promptly, was not reasonably suited to treat the injury or that the care was unduly inconvenient. The reasonableness of the care provided is the major issue.

Examination of Injured Employees



- Iowa Code Section 85.39: The employee shall submit for examination at a reasonable time and place, and as often as reasonably requested, to a physician of the employer's choosing.
- Law Change: The failure to submit for examination under the prior law would *suspend* the employee's right to any compensation for the period of refusal. Under the new law such refusal results in *forfeiture* of benefits for the period of refusal.
- If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes the evaluation to be too low, the employee shall be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's choice.
- Added language: an employee can only obtain reimbursement for the cost of an independent medical evaluation if the injury is determined to be compensable.

Weekly Benefits – Temporary Total Disability/Healing Period



- Temporary benefits begin on the fourth day of disability after the injury and continue until one of the following occurs:
 - The employee reaches the point of maximum medical improvement;
 - The employee returns to work; or
 - The employee is capable of returning to substantially similar employment.
- Note: If an injured employee receives any benefits under a group plan covering non-occupational disabilities contributed to wholly or partially by the employer and the benefits were not payable for a compensable work comp injury, the employer is entitled to a credit for the payments made to the employee under such a plan.

Rate



- The amount that a claimant receives in benefits per week (weekly rate) is commonly based on the claimant's gross average weekly earnings.
- Iowa Code Section 85.36 provides the basis for determining the gross weekly earnings of the employee at the time of the injury.
- Generally, rate is determined by finding claimant's marital status, number of exemptions and gross weekly earnings, then referring to the appropriate benefit schedule to find the corresponding rate.
- The rate is calculated from the date of injury and is not changed by subsequent increases or decreases in pay or changes in marital status and exemptions.

Rate – Common Issues



- Marital Status
- Dependents
- Unrepresentative weeks
- Claimant worked less than 13 weeks immediately preceding the injury

Weekly Benefits – Temporary Partial Disability



- Temporary partial disability benefits are paid when a claimant is not totally incapacitated during the recovery period following the injury, but is able to perform some meaningful employment at a reduction in earnings.
- Iowa Code Section 85.33(4) – The employer and insurance carrier owe temporary partial disability benefits equal to 66-2/3% of the difference between the employee's gross weekly wages and the actual earnings while working at temporary part-time work.

Offer of Suitable Work



- Iowa Code Section 85.33(3)(a): “If an employee is temporarily, partially disabled and the employer for whom the employee was working at the time of injury offers to the employee suitable work consistent with the employee’s disability the employee shall accept the suitable work, and be compensated with temporary partial benefits. If the employer offers the employee suitable work and the employee refuses to accept the suitable work offered by the employer, the employee shall not be compensated with temporary partial, temporary total, or healing period benefits during the period of refusal.”
- Added Language:
 - Work offered at the principal place of business or location where claimant had previously worked will be presumed geographically suitable for claimants who travel away from the location 50% of the time.
 - If written notice is provided to claimant of an offer of suitable work and claimant does not provide a written notice of refusing the offer, then claimant cannot later claim a lack of suitability and attempt to argue temporary benefits are owed for that period.

Permanent Partial Disability



- Law Change - Iowa Code Section 85.34(2):
“Compensation for permanent partial disability shall begin when it is medically indicated that maximum medical improvement from the injury has been reached and that the extent of loss or percentage of permanent impairment can be determined by use of the guides.”
- This change removes the date of return to work and the date that the claimant is medically capable of returning to substantially similar employment as the commencement date for permanent benefits.

Permanent Disability – Scheduled Member Injuries



- Scheduled member injuries entitle claimant to a percentage of a fixed number of weeks of compensation, based upon the claimant's impairment rating to the given member.
- The schedule is found at Iowa Code Section 85.34(2).
- Example:
 - The schedule values the loss of a full arm at 250 weeks of compensation. If a claimant sustains a 10% impairment to the arm, the claimant is entitled to 25 weeks of compensation (.10 x 250 weeks).
- Added language : When determining functional disability, the extent of loss or percentage of impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment. Lay testimony or agency expertise shall not be utilized.

Permanent Disability – Unscheduled Injuries



- Injuries to body parts not listed on the schedule are known as unscheduled injuries or injuries to the “body as a whole.”
- When an injury results in permanent disability to the body as a whole, it is referred to as industrial disability.
- An industrial disability analysis considers numerous factors and measures the loss of earning capacity resulting from a compensable nonscheduled member injury. The loss is measured as a percentage of 500 weeks of compensation.

Permanent Disability – Unscheduled Injuries



- **Industrial disability factors:**
 - Age
 - Education
 - Claimant's motivation to return to work
 - Employer's refusal to re-employ the claimant in any capacity
 - Work experience of the claimant prior to injury, after injury, and potential for rehabilitation
 - Claimant's qualifications intellectually, emotionally, and physically
 - Claimant's earnings prior and subsequent to the injury
 - Functional impairment
 - Permanent restrictions or inability because of the injury to engage in employment for which the employee is suited
 - Claimant's medical condition prior to injury, after injury and presently
 - Severity of the injury and length of healing period

Permanent Disability – Unscheduled Injuries



- **Law changes:**
 - The loss of earning capacity analysis must take into account the number of years in the future it was reasonably anticipated that the employee would work at the time of the injury.
 - A claimant who returns to work or is offered work for the same or greater pay is only owed the functional impairment. A claimant who returns to work for the same employer and is later terminated will have a review/reopening right to prove further industrial disability beyond the functional impairment.
 - For the loss of a shoulder, weekly compensation during 400 weeks.

Permanent Total Disability



- Iowa Code Section 85.34(3) – A claimant who has sustained a permanent total disability as a result of a compensable injury is entitled to benefits for life or for so long as he/she is totally disabled from any type of work.
- Odd-lot Doctrine: A claimant can be deemed odd-lot when an injury prevents him/her from obtaining employment in any well-established branch of the labor market. The odd-lot claimant may be able to do some work, however, the work is limited in quantity, quality and no stable market exists for the services. Such a claimant may continue to receive permanent total disability even though engaging in odd-lot employment.

Permanent Total Disability



- **Law changes:**
 - Permanent partial disability compensation for an injury ends on the date that an injured worker begins to receive permanent total disability compensation for any injury.
 - Permanent total disability is not owed in any week that claimant received payment from employment or for services greater than 50% of the statewide average weekly wage.
 - Permanent total disability is not owed when claimant is receiving unemployment.

Penalty Benefits



- When an employee's benefits are unreasonably withheld, delayed, or denied the Commissioner can award a penalty of up to 50% of the amounts wrongfully withheld.
- The focus is on whether benefits were paid in a timely manner and, if not, whether there was a reasonable excuse for the failure to make timely payment.