


IOWA WORKERS'
COMPENSATION 101

A Guide to Iowa Workers' Compensation


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Focus of Discussion



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Jurisdiction

- ✓ Injury occurs inside the state
- ❖ When the injury occurs outside the state
 - Injury Date **Before July 1, 2017**
 - ✓ Employer has a place of business inside the state
 - employee works at that place of business or
 - employee lives in Iowa or
 - employee is working under a contract of hire which provides that the employee's claims be governed by Iowa law.
 - ✓ Employee is working under a contract of hire made in this state **and**
 - employee regularly works in Iowa or
 - injury is not compensable in any other state or
 - employment is outside the US
 - Injury Date **After July 1, 2017**
 - ✓ Employee regularly works in Iowa



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Compensability Standard

- ❖ Claimant must prove by a preponderance of the evidence that an injury arose out of employment and that the injury occurred in the course of employment.
 - Includes death and disease, but excludes occupational disease
 - Iowa has a separate Occupational Disease Act
- ❖ "Injury" defined broadly and can include:
 - Traumatic physical injury caused a single event
 - Cumulative injury caused by repetitive stress or exposure that develops over time
 - A work-related disease
 - A mental or emotional injury that is work-related
 - Aggravation of pre-existing conditions
 - Sequelae of injuries
- ❖ An Injury can be "any health impairment other than a normal building up and tearing down of body tissues"
 - Work duties must be both a substantial and material cause in bringing about the condition or injury



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Injury Must “Arise Out of” Employment

- ❖ “Arise out of” – requires proof of a causal connection between the conditions of the employment and the injury. The injury may not have coincidentally occurred while at work but must in some way be caused by or related to the working environment or conditions of the employment.
- ❖ Special Cases:
 1. Actual risk
 2. Idiopathic injuries
 3. Unexplained falls

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“IN THE COURSE OF”



PREMISES RULE

General rule that an employee is considered “in the course of” employment *after* the employee reaches the premises where their actual work begins and is carried on and *ceases when they leave*.

COMING & GOING RULE

Injuries sustained when an employee is going to or coming from work are **not** “in the course of” employment.

**Actual work activity at the time of injury is unnecessary. Emphasis is placed on whether employee is furthering the employer’s business, whether the task is common to the job, or outside the usual employment duties.*



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Personal Comfort

Remember employees usually do not leave the course of their employment by seeking personal comfort through such things as smoking, using bathroom facilities, or eating.

Important Considerations:

1. Degree to which the activity was employment-related
2. Reasonableness of the employee's actions
3. Whether injury sustained during business hours
4. Degree to which the employer sponsored the activity
5. Whether the employer exercised control over the activity
6. Whether there was a substantial benefit to the employer



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Conduct that falls Outside the Course of Employment

Horseplay

1. Employee initiated horseplay of own volition
2. Extent and seriousness of deviation
3. Completeness of deviation
4. Whether practice was accepted part of employment
5. the extent to which the nature of the employment may be expected to include horseplay

Violation of Statute or Rule

1. Unambiguous rule
2. Strictly and consistently enforced



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EXCEPTIONS TO THE "PREMISES RULE"

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Employer-Supplied
Transportation

2

Dual Purpose
Trips

3

Special
Errands

4

Parking Lots

5

Sole Mission

6

Traveling
Employees



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Second Business Situs Exception



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The second business location exception has been adopted by 22 states and the District of Columbia, either through legislative action or judicial decisions.

Courts in those states look to three indicators when determining whether the second business location exception applies:

- (1) The quantity and regularity of work performed at home,
- (2) The continuing presence of work equipment at home, and
- (3) Special circumstances of the employment that make it necessary and not merely personally convenient to work at home.



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Second Business Situs Exception

This exception has not been officially adopted in Iowa yet.

- Iowa Court of Appeals considered applicability of a Second Business Situs exception, but ultimately held it was not applicable in the case.
 - [Seaman v. Burgess Health Center, 2015 WL 5965149 \(Iowa Ct. App., Oct. 14, 2015\)](#) (unpublished).
- While the Iowa Court of Appeals affirmed the well-established coming and going rule in *Seaman*, we will have to wait and see whether Iowa will recognize the second business location exception.



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Defenses

Notice

Statute of Limitations

Intoxication

Intentional Injuries



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Reporting Requirements

INJURED WORKER

- ❖ Required within 90 days from the date of the occurrence of the injury
 - **Injuries before July 1, 2017:**
 - the 90 day period does not start until the claimant knows three things:
 - Injured
 - Work related
 - Serious enough to impact ability to earn wages
 - **Injuries after July 1, 2017:**
 - the 90 day period does not start until the claimant knows **two** things:
 - Injured
 - Work related

EMPLOYER/INSURANCE CARRIER

- ❖ FROI – First Report of Injury
- ❖ SROI – Subsequent Report of Injury
- ❖ Annual Report
- ❖ Final Report



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Statute of Limitations

An employee must file an Original Notice and Petition:

- ❖ Within **two years** of the occurrence of the accident or injury,
- ❖ Within **three years** of the date of last weekly benefits are paid, approval of a settlement, or issuance of an award.



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85.16 Defenses

1. Intoxication

- **Before July 1, 2017:** Employer's burden to prove that employee was intoxicated and that intoxication materially caused work injury.
- **After July 1, 2017:** Positive drug/alcohol test creates rebuttable presumption that employee was intoxicated and that intoxication materially caused work injury. Presumption is rebuttable by worker if can show was not "intoxicated" and/or it did not cause the work injury.

2. Intentional Injuries

- no compensation is to be paid in the case of an "employee's willful intent to injure the employee's self or to willfully injure another."



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Authorization of Medical Care

❖ **Generally**, employer's obligation to provide reasonable and necessary medical care carries with it the right to select the treating physician, provided that the care is offered promptly and is reasonably suited to treat the injury without undue inconvenience to the employee.

❖ **Exceptions –**

- 1) Emergency Care
- 2) Alternate Medical Care
- 3) Denied claim

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Authorization Defense

- ❖ If the employee knows or should know the care is not authorized, or for a separate condition unrelated to the workers compensation claim, even if treated by an authorized treating physician, the employee may be responsible for the costs of the care
- ❖ The defendants have the opportunity to affirmatively prove the employee knew or should have known the care was unrelated to the claim or the physician was no longer authorized.



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Payment of Medical Benefits

- ❖ No Statutory Timeframe for payment of medical expenses
- ❖ There is no statutory interest or penalty exposure for delayed or denied medical benefits. However, an unreasonable denial or delay of medical benefits may serve as the basis for a bad faith action.
- ❖ If compensability is admitted, employer not responsible for payment of unauthorized care, unless employee shows care was successful and beneficial toward improving condition in a way that benefits the employer as well as the employee



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Payment of Medical Benefits

- ❖ If the employer pays medical benefits under a group plan, the amounts paid by the group plan shall be deducted from the amounts paid under the Workers' Compensation Act.
- ❖ If the employer believes the charges of a medical provider are excessive, the employer has the right to have the issue decided by the Commission
- ❖ Employee waives any claim of privilege by virtue of filing a workers' compensation claim. Failure of a medical provider to provide medical records may result in a Court order imposing penalties or sanctions on the provider.



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Independent Medical Examinations

- ❖ If employer **denies** the compensability of an injury under the act, it cannot assert that the employee's medical treatment was unauthorized or direct care. However, the employer is entitled to an IME under 85.39.
- ❖ If employer **accepts** the claim and has provided medical care, once the employer obtains an impairment rating, Iowa Code section 85.39 allows an employee who is dissatisfied with the evaluation to seek their own IME, and have it reimbursed by the employer.



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Independent Medical Examinations

- ❖ For injuries after July 1, 2017, an employer is only liable to reimburse the reasonable cost of IME, not the cost of the report.
- ❖ The reasonableness of the fee charged for the IME is based on the typical fee charged by a medical provider in the local area where the examination is conducted.
- ❖ The employer is not liable for the cost of the IME if the injury for which the injured worker is being examined is determined not to be compensable.
- ❖ Refusal of the claimant to submit to IME "forfeits" right to benefits during the period of refusal.



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Indemnity Benefits

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Temporary Benefits

Payable when employee is on restrictions from an authorized provider and unable to substantially similar work.

Temporary Total Disability (TTD)

Healing Period (HP)

Temporary Partial Disability (TPD)



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Calculating Temporary Benefits

1. Temporary total and healing period benefits (TTD/HP) = rate

1 day	.143
2 days	.286
3 days	.429
4 days	.571
5 days	.714
6 days	.857

2. Temporary partial disability (TPD) = (AWW – Actual Earnings) x .6666



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When to Commence Temporary Benefits

Temporary Total Benefits

- After 3 day waiting period

Healing Period Benefits

- First due date = 11th day after the date of injury
- Next due date = last day of the week the benefits cover

Temporary Partial Benefits

- After 3 day waiting period



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When to Terminate Temporary Benefits

Temporary Total Benefits

- Return to work; or
- Medically capable of returning to substantially similar employment

Healing Period Benefits

- Return to work; or
- MMI; or
- Medically capable of returning to substantially similar employment

Temporary Partial Benefits

- The injured worker is medically capable of returning to substantially similar employment



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How to Terminate Temporary Benefits

In *Auxier v. Woodward State Hospital-School*, the Iowa Supreme Court declared a claimant's interest in workers' compensation a property right which cannot be taken without due process of law.

- Must give 30 days notice of termination stating the reason for the termination and advising the employee of the right to file a claim with the workers' compensation commissioner, unless reason for termination is a return to work
- Failure to provide the “*Auxier* notice” usually results in an additional 30 days of benefits in a contested case proceeding before the workers' compensation commissioner



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Eligibility for Temporary Benefits

Iowa Code § 85.33(3)

- ❖ An employee who refuses a suitable work offer will not be compensated with temporary benefits.

❖ Suitability of Work



Work offered must be consistent with the employee's disability.



Work offered at the employer's principal place of business is geographically suitable



Work offered away from place of business is geographically suitable



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Eligibility for Temporary Benefits

Iowa Code § 85.33(3)

❖ Employer's Offer of Work

- 1 The Employer must communicate the offer of temporary work in writing.
- 2 The written offer must include details of the work assignment including lodging, meals, and transportation.
- 3 The written offer must communicate the consequences of refusal of suitable work.



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Eligibility for Temporary Benefits

Iowa Code § 85.33(3)

Employees Refusal of Work

- 1 An employee's refusal of work offered must be made in writing.
- 2 The written refusal must communicate the refusal and reason for the refusal.
- 3 The written refusal must be provided to the employer at the time the offer of work is refused.



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Permanent Benefits

SCHEDULED INJURIES

- A scheduled disability is evaluated under the functional method, which provides a schedule of benefits for injuries to specific members of the body.
- "It is the anatomical situs of the permanent injury or impairment which determines whether the schedules in section 85.34(2)(a-t) are applied."

UNSCHEDULED INJURIES

- An unscheduled disability is an injury to body parts other than those listed in (a)-(t) and is considered an injury to the body as a whole and evaluated according to the industrial method.



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Scheduled Members

- Compensates for "loss of function"
 - Paid pursuant to fixed schedule of weeks assigned for loss of use of certain body parts irrespective of the effect the permanent injury has on earning capacity.
 - The amount payable for specific injuries contemplates both the impairment and payment for the reduced capacity to perform labor.



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Unscheduled (BAW) Injuries

- Compensates for “Loss of Earning Capacity”
 - Compensation is 80% of employee’s weekly spendable earnings up to the statutory maximum, multiplied by the industrial disability rating, multiplied by 500 weeks. Employee’s inability, because of the injury, to engage in employment for which he or she is fitted.
 - Applies to all injuries causing permanent impairment not specifically mentioned in §85.34



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Iowa Code Section 85.34



If an employee sustains permanent partial disability for a non-scheduled injury, compensation is paid during the number of weeks in relation to five hundred weeks as the **reduction in the employee's earning capacity caused by the disability** bears in relation to the earning capacity that the employee possessed when the injury occurred.



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Industrial Disability Considerations



DEMOGRAPHICS

Employee's age, education, qualifications, and experience.



SUITABLE WORK

Employee's inability, because of the injury, to engage in employment for which they are fitted.



FAILURE TO EMPLOY

The failure of the employer to provide employment after an employee suffers an injury.



STATUS

A change in the employee's status at their employment following a return to work.



MITIGATION

Employee's mitigation of their industrial disability. (Efforts to return to work.)



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Iowa Code Section 85.34



New Paragraph added. If an employee who is eligible for compensation under subsection (v) returns to work **or** is offered work for which the employee receives or would receive the same or greater salary, wages, or earnings than the employee received at the time of the injury, the employee shall be **compensated based only upon the employee's functional impairment** resulting from the injury, and not in relation to the employee's earning capacity.



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CONDITIONS FOR FUNCTIONAL IMPAIRMENT ANALYSIS

①

The employee must be eligible for compensation under 85.34(2)(v)



②

The employee must have returned to work OR be offered work earning the same or greater earnings than they received at the time of injury



③

The employee is compensated based only upon their functional impairment



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Iowa Code Section 85.34

New Paragraph added to 85.34(2)(v).

Notwithstanding [...] if an employee who is eligible for compensation under this paragraph returns to work with the same employer **and** is compensated based only upon the employee's functional impairment resulting from the injury [...] **and** is terminated from employment by that employer, the award or agreement for settlement for benefits under this chapter shall be reviewed upon commencement of reopening proceedings by the employee for a **determination of any reduction in the employee's earning capacity** caused by the employee's permanent partial disability.



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FUTURE ELIGIBILITY FOR INDUSTRIAL DISABILITY

①

The employee must be eligible for compensation under 85.34(2)(v) and have returned to work with the same employer



②

The employee must be terminated from employment by that employer



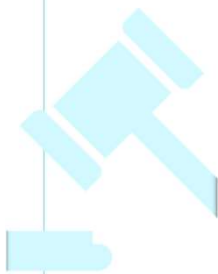
③

The employee can commence a review reopening proceeding to obtain benefits for loss of earning capacity



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②

The employee must be terminated from employment by that employer



③

The employee can commence a review reopening proceeding to obtain benefits for loss of earning capacity



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Successive Disabilities Iowa Code § 85.34(7)

- ❖ After July 1, 2017, an employer is liable for compensating **only that portion** of an employee's disability that relates **to the injury that serves as the basis for the employee's claim**.
- ❖ Employer is not liable for compensating an employee's preexisting disability from a prior injury with the employer, to the extent that the employee's preexisting disability has already been compensated. Basically, this simplifies former subsections (b) and (c).
- ❖ Attempts to modify the fresh start and full responsibility rules of law – goal to compensate an employee's disability that was caused by work-related injuries with the employer without compensating the same disability more than once.



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Permanent Total Disability (PTD)

- ❖ Where employee has lost access to the labor market based on personal factors coupled with the employee's permanent physical condition caused by the work-related injury, and the employer has failed to carry its burden of producing evidence of available suitable employment.
- ❖ The benefits are paid for the employee's life.
- ❖ Odd-lot PTD: Although worker may be able to do some work, it is so limited in quality, quantity and dependability so that a reasonably stable market does not exist for the services.



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Forfeiture of PTD Iowa Code § 85.34(3)

- ❖ New paragraph added to section 85.34(3)(c).
 - The claimant forfeits PTD benefits for any week(s) he/she receives compensation equal to or greater than 50% of the statewide AWW for services rendered from any source.
- ❖ New paragraph added to section 85.34(3)(d).
 - Bars a claimant from receiving PTD benefits while receiving unemployment compensation pursuant to Iowa Code Ch. 96.
- ❖ Issues with monitoring the claimant's post-PTD activities.



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When to Commence Permanent Benefits

Iowa Code Section 85.34



Compensation for **permanent partial disability** begins 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 AMA Guides Evaluation to Permanent Impairment, Fifth Ed.



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When to Terminate Permanent Benefits

- Once rating has been paid out (scheduled member injuries)
- Once fair and reasonable permanency benefits have been volunteered (BAW injuries)



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Average Weekly Wage & Compensation Rate

- ❖ At least 13 different methods for calculating AWW depending on how the employee is paid
 - For employees who are paid daily, hourly or by output:
 - Averaging the earnings of 13 representative weeks pre-dating the injury
 - Includes shift differential but excludes premium or overtime which is paid at straight time
 - Exemption Status:
 - Spouse and Dependents at the time of the injury
 - When determining compensation rate, use the tables provided on the Iowa Division of Workers' Compensation website
 - AWW is fixed at the time of the injury



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Iowa Wage Statement Calculation/Rate Verification						
Claimant Name:	Walter White					
Claim Number:	2243302938					
Date of Hire:	8/31/2009					
Date of Injury:	4/27/2016					
Jurisdiction:	Iowa					

Week #	Period Ending (Check date)	Hourly Pay Rate	Reg Hours	OT Hours	Shift Dif.	Gross Wages
Omit	4/27/2016 (5/5/2016)	\$ 18.55	42.75	9	\$ 54.10	\$ 1,014.06
Omit	4/13/2016 (4/21/2016)	\$ 18.55	7.92	12	\$ 28.20	\$ 397.72
1-2	3/16/2016 (3/24/2016)	\$ 18.55	80	0	\$ 54.10	\$ 1,538.10
3-4	3/2/2016 (3/10/2016)	\$ 18.55	80	5	\$ -	\$ 1,576.75
5-6	2/17/2016 (2/25/2016)	\$ 18.55	76	8	\$ -	\$ 1,558.20
7-8	2/3/2016 (2/11/2016)	\$ 18.55	77.5	3	\$ 54.10	\$ 1,547.38
9-10	1/20/2016 (1/28/2016)	\$ 18.55	80	0	\$ 24.20	\$ 1,508.20
11-12	1/6/2016 (1/14/2016)	\$ 18.55	80	0	\$ -	\$ 1,484.00
13-14	12/23/2016 (12/31/2015)	\$ 18.55	78.25	2	\$ -	\$ 1,488.64
TOTAL						\$ 10,701.26

AWW:	\$ 764.38
EXEMPTIONS:	M/3
RATE:	\$ 508.70

AWW & Rate Calculation Tips

1. Determine how employee is compensated.
2. Use weeks that reflect customary earnings.
3. Establish payments to the employee that should be included.
4. For new or part-time employees, seek additional wage information

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Interest, Penalty, and Bad Faith

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Interest

Owed on "unpaid compensation" from the date each payment comes due

- ❖ Interest should be volunteered when any late payments are made. Penalties will not be assessed on late interest payments, but interest will continue to accrue
- ❖ If delay in payment of benefits is due to neglect of the claimant, interest is not payable
- ❖ Applies to weekly payments only; does not include medical expenses

Benefits accrued prior to July 1, 2017, interest paid at 10% per annum;

Benefits accrued after July 1, 2017, interest paid at Treasury rate plus 2%



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Penalty

In order to deny any benefits due and owing under the Iowa Workers' Compensation Act, the employer must have a reasonable or probable cause or excuse for the delay, denial, or termination of payments

If the Commission finds that the basis for the denial was unreasonable or without probable cause, a penalty, up to 50% of the benefits that were denied, delayed, or terminated will be awarded

- ❖ Applies to weekly payments only; does not include medical expenses or interest



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Penalty

Will be awarded unless

- ❖ Delay is necessary for the insurer to investigate the claim; or
- ❖ The employer had a reasonable basis **at the time of the denial** to contest the employee's entitlement to benefits

To prove a "reasonable basis" for denial, delay, or termination of benefits exists, all three of the following must be present:

1. The excuse must be preceded by a reasonable investigation by the employer/insurer
2. The results of the investigation must be the actual basis for the denial, delay, or termination
3. The basis must be conveyed to the employee at the time of the denial, delay, or termination



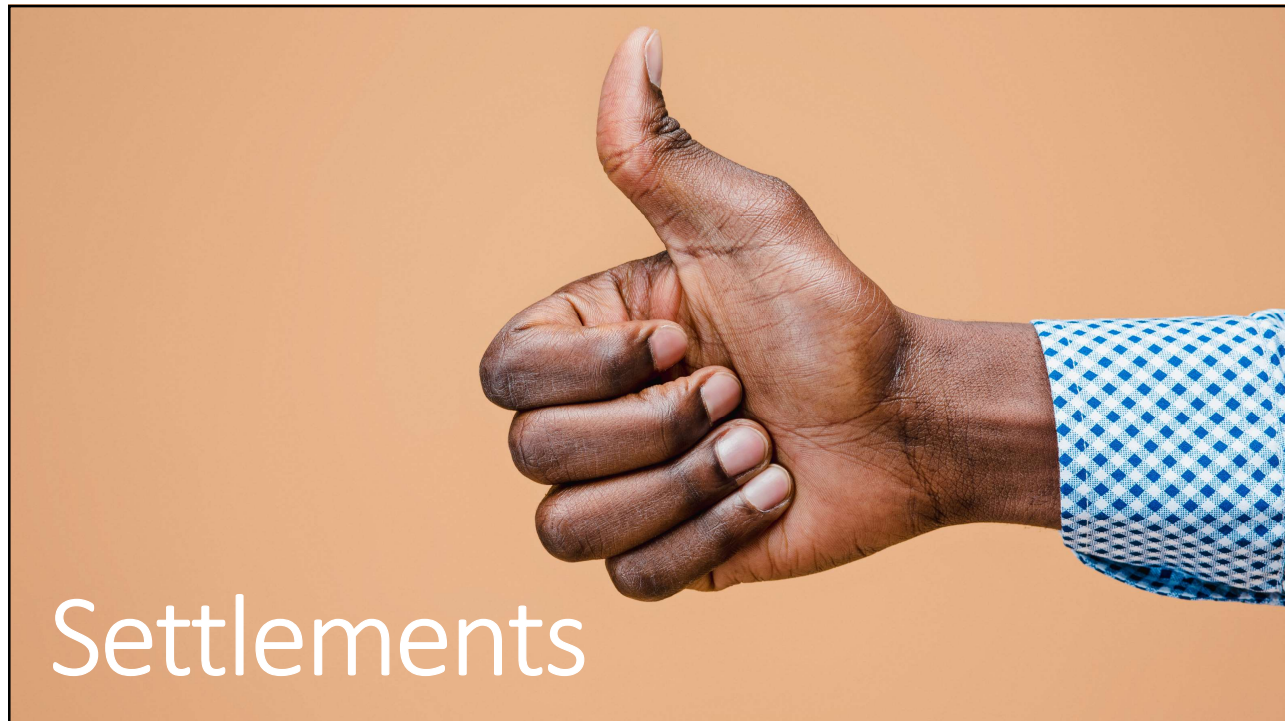
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Bad Faith

- Standard is similar for bad faith as for penalties – employer must have a "reasonable basis" to support a denial, delay, or termination of benefits
- Applies to medical benefits as well as indemnity benefits
- Outside the workers' compensation system: punitive damages can be awarded



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Types of Settlements

Compromise Settlement

Effect:

- Closes indemnity/ medical - ends both parties' future right

Requirements:

- Evidence of bona fide dispute

Full Commutation

Effect:


- Closes indemnity/ medical - ends both parties' future right
- Preserves credit

Consideration/Risks

- Employment status
- Credit

Requirements

- 10 weeks of unaccrued benefits
- Statement of Need
- Lump sum payment of unaccrued benefits



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Types of Settlements

Agreement for Settlement

Effect: Open file, Confirms compensability/preserves future rights

Consideration/Risks

- Employment status
- Credit
- Open medical
- Review & Reopening
- Risk of re-injury

Requirements

- Agree to rate
- No discount
- Resolve over/underpayments
- Interest
- Lump Sums & SOL



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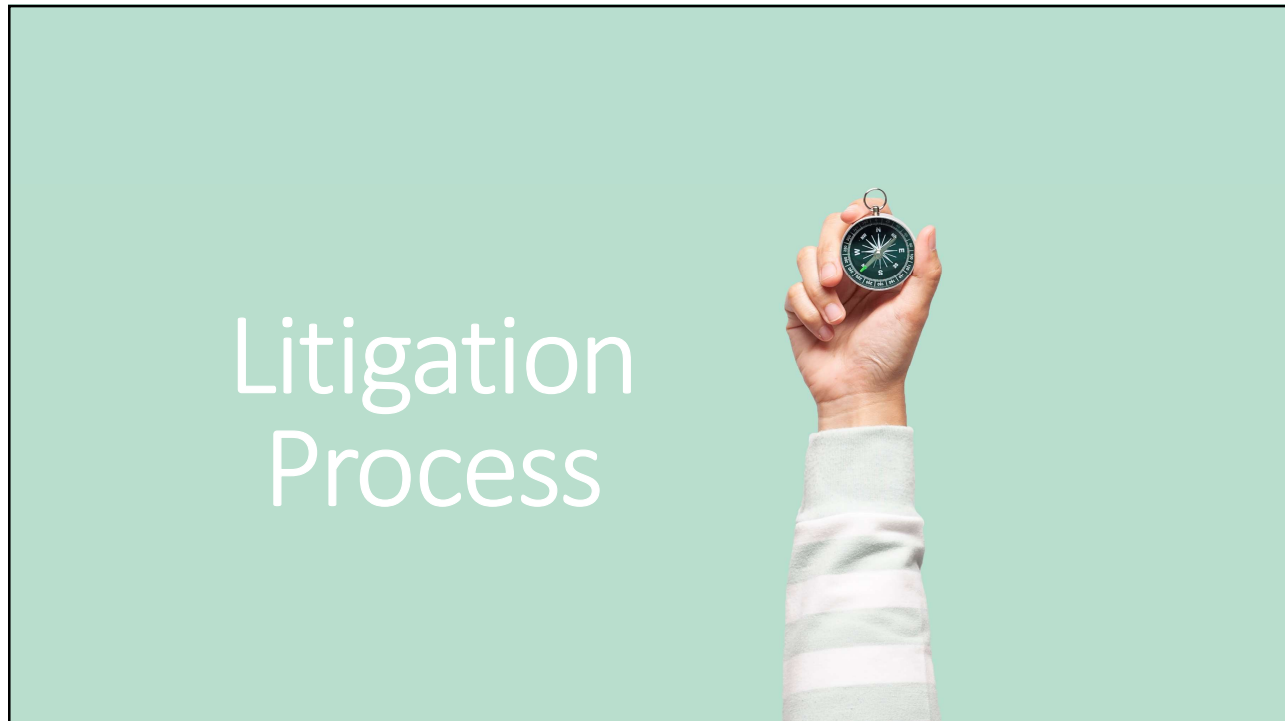
Types of Settlements

General Considerations

- Employment status
- SSDI/Medicare
- Future medical needs
- Child Support
- Unpaid/disputed medical
- Medical liens
- Current weekly payments
- Credit



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Litigation Process

- ❖ System Structure – similar to civil litigation
 - Petition/Answer Phase
 - Discovery Phase
 - Experts
 - Hearings
 - Appeals
- ❖ Alternate Care Hearings
 - Get an Alt Care Petition to Counsel immediately
 - Medical benefits only.
 - Compensability must not be in dispute.
 - Hearings are generally heard telephonically & within 10 days of petition filed



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