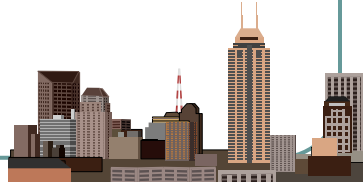


INDIANA WORKER'S COMPENSATION OVERVIEW



**Presented by Kopka,
Pinkus, Dolin & Eads**
January 2012
Copyright KPDE. All rights reserved.



Indiana Worker's Compensation

*Presented
by:*

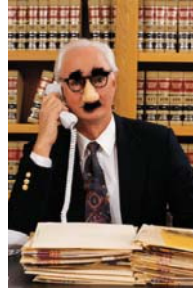


KOPKA PINKUS DOLIN & BADA LLC



WHO ARE THESE PEOPLE?

Tricia Bellich, Chair
James O'Gallagher
Cameron Christoph
Joe Forte
Doug Meagher
Jennifer Meyer
Kathleen Shortridge
Attorneys with
Kopka Pinkus Dolin & Eads
Statewide practice in Indiana
Offices in Indiana, Illinois and Michigan



Our firm has a state wide presence with offices in South Bend, Crown Point and Indianapolis. We have a combined experience of over 100 years.

OFFICE LOCATIONS

200 N. LaSalle Street
Suite 2850
Chicago, IL 60601
(312) 782-9920
(312) 782 9965 fax

100 Lexington Drive
Suite 100
Buffalo Grove, IL 60089
(847) 549-9611
(847) 549-9636 fax

32605 W. Twelve Mile Road
Suite 200
Farmington Hills, MI 48334
(248) 324-2620
(248) 324-2610 fax

9801 Connecticut Drive
Crown Point, IN 46307
(219) 794-1888
(219) 794-1892 fax

220 West Colfax Avenue
South Bend, IN 46601
(574) 288-3270
(574) 288-3280 fax

11611 N. Meridian
Suite 350
Carmel, IN 46240
(317) 818-1360
(317) 818-1390 fax



Overview



- Compensability
- Benefits
- PPI V. PTD
- Bad Faith
- Before The Board
- Time Limitations
- Subrogation
- Settlements

What is the mileage rate?

Outside the county of employment



44 cents



When an employee is asked by the employer or carrier to travel outside the county of employment for medical care, the state mileage rate of .44 cents per mileage applies. This rate does fluctuate and should be checked with the Board or counsel on a regular basis.

Compensability

- Must establish *arise out of and in the course of employment*
- Examples
 - heart attacks
 - stress cases
 - repetitive trauma
 - parking lot



For an injury to be compensable, it needs to arise out of and occur during the course of employment. While every injury and circumstance is fact specific, in Indiana, these are some examples of injuries or locations where an injury occurs that can or cannot be compensable depending on the fact pattern.

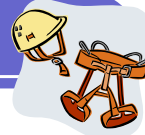
MORE ON COMPENSABILITY

- Deviation from route
- Lunch period
- To and from work
- Co-employee assaults
- Traveling employees-*reasonably found incidental to employment*



Sometimes, compensability can be a hard animal to wrap your head around. It is not a black and white area of the law. Again, the accidents are fact specific but lunch period injuries are often compensable. However, travelling to and from work accidents are usually not. A larger circle of compensability does exist for travelling employees. They are oftentimes afforded a broad circle of compensability than the regular worker who does not travel as a function of her job.

EMPLOYER DEFENSES



- Intoxication
- Commission Of Offense (Not Traffic Citations)
- Knowing Failure To Use Safety Appliance
- Knowing Failure To Obey Reasonable Written Posted Rule
- Knowing Failure To Perform Statutory Duty
- Knowingly Self Inflicted Injury



Many do not realize that affirmative defenses actually exist as part of the Indiana statutory scheme. They are listed above and if the defendant can meet the burden, the defense can act as a complete bar to compensation in the right scenario.

AVERAGE WEEKLY WAGE



**AWW=TOTAL WAGES DIVIDED BY 52 WEEKS
PRIOR**

➤ **Other Ways**

- Miss More Than 7 Working Days In 52 Week Period?

*Divide By # Of Weeks And Days Actually Worked
or*

Like employee performing same work or grade

- Sales, overtime etc. *included* in calculation




➤ **Other employment?** *Not considered unless the same
or similar in nature*

➤ **Minimums and Maximums**

For those of you who do the nuts and bolts of claims handling, here are some of the basics as to how Indiana views the computation of the average weekly wage and if the claimant has another job. Also, Indiana has a minimum and maximum rate of compensation.

Benefits

- TTD 7 day waiting period
 2/3 of AWW (pick up on 22nd day)
- TPD 2/3 of difference
- Medical employer directed IMEs
 board IMEs

Again, some more nuts and bolts. Temporary Total Disability is calculated as 2/3 of the AWW wage. It begins to be paid on the 8th day. Now, the first 7 days of disability (the waiting period) are paid after the 21st day of total disability.

Temporary Partial Disability also has a 7 day waiting period and is paid at 2/3 of the difference between what the claimant was making prior to the injury and earning post injury working light duty. Medical benefits in Indiana are directed by the employer and paid by the employer. Also, employers can conduct independent medical evaluations. Lastly, if certain statutory requirements are met, the claimant can petition for a Board Appointed IME. The cost of the Board Appointed IME is paid by the defendant even though the examiner is selected through the Indiana Worker's Compensation Board. Please note that the results of a Board IME do carry great weight with the hearing members in Indiana.

More on Benefits-
What do I have to do?



- Weekly installments-first payment due within 14 days after disability begins
- Within 15 days, tender an **Agreement to Compensation (1043)** or extension of time requested
- Deny liability, notice of denial must be mailed within 30 days after the employers knowledge of the injury- **Form 48557**

Deadlines and forms are questions frequently asked about in Indiana claim handling. Yes, Indiana is a form state and the forms are available on the Worker's Compensation Board website at www.in.gov/workcomp. Here are some commonly used forms and deadlines for you to keep in mind.

WHAT IS WITH THESE FORMS?

First Report of Injury

- within 7 days of occurrence or
- within 7 days of employers knowledge of injury



Agreement to Compensation 1043 can also settle case-PPI.

Notice of Suspension of Medical Benefits-State Form 54217

Here are a few other regularly used forms and important functions, deadlines etc.

WARNING- FORMS!!



- Report of TTD/TPD Termination Reduction
 - State form 38911 (revised 8/09)
 - multiple purpose, whenever change in benefits,
 - Explanations-keep it simple
- Notice of Denial of Benefits
 - State Form 53914
 - mailed not later than 30 days after employer's knowledge of injury
 - Again, keep it simple

I know we have been discussing forms but Indiana has over the years recently placed a greater dependence on forms. When TTD/TPD is terminated, it is necessary to timely file a 38911. Failure to do so could mean additional benefits to the claimant for lack of proper notice of termination.

Bad Faith

- IC 22-3-4-12.1
 - lack of diligence
 - in bad faith
 - independent tort in adjusting or settling claim
- \$20,000 limit
- exclusive jurisdiction : Sims v. USFG



In Indiana, the above statute was created to address the issue of bad faith actions on the part of the employer, carrier or agent when settling or adjusting the claim. There is a limit of \$20,000 per case for bad faith. It is important to be timely when handling claims and filing the proper forms we have discussed to avoid a potential bad faith action. The Indiana Worker's Compensation Board has exclusive jurisdiction to hear bad faith claims.

PPI V. PTD

PPI

- Entitlement to award
- Scheduled injuries
- AMA 6th edition

PTD

- 500 weeks
- Future medicals?
- Vocational assessment



Usually, cases end up falling into one of the two above categories. Can the employee return to gainful employment and does he have a disability rating? Then, a PPI settlement is usually in order. However, if the claimant can no longer return to any gainful employment, then he is considered permanently totally disability and entitled to 500 weeks of compensation. Future medical care can be awarded in limited circumstances if statutory and case law criteria is met.

Before The Board

- Hearing members
 - PTCS
 - hearing
- Discovery
- Mediation (Case Coordinators)
- Full board



Many ask what is the Board? The Indiana Worker's Compensation Board consists of a Chairman and six Hearing Members. Together, they make up the Full Board. The Full Board reviews decisions from the single Hearing Member when a decision is appealed. Each Judge runs his/her region in a different fashion but most hold pre-trial conferences (PTCS) and hearings. Discovery is allowed in Indiana unlike some states. Also, the Case Coordinators of the Worker's Compensation Board acts liaisons between pro se plaintiff's and the employer. They also arrange the Board Appointed IMEs. And, these individuals can mediate cases as well for the parties.

TIME LIMITATIONS



- 2 years from DOA
- **Prentoski**-SOL runs from last day for which Compensation paid (PPI or TTD)
- **Stump**-PPI runs from date of MMI, unless otherwise specified

Some statutes of limitation are concrete and some are flexible. Indiana is somewhat of a hybrid as it is two years from the date of injury or two years from the last day for which compensation has been paid. Compensation is defined in this situation as a PPI rating or TTD/TPD payment. Notice-medical bill payments are not enough. Unless stated authorized, the Board will assume that the PPI payment divided into weekly benefits starts running from the date of maximum medical improvement.

Subrogation

- Additional 1 year from DOA
- 75% without suit
66.2/3% with suit
- 3RD party needs sign off



Can I recover a lien? In Indiana, lien rights are statutory. Also, employers and carriers have an additional one year to file the claim from the date of accident. Recovery is listed out in the Indiana Statute Section 22-3-2-13 as 75% without suit filed and up to 66.2/3% with suit filed. Also, the employer or carrier must pay its pro rated share of costs and expenses. Lastly, case law says in certain situations, the 3rd party employer needs to sign off on the agreement.

Settlements



State form 1043



Section 15 agreement

- dispute
- more inclusive



These are two ways to resolve a case or settle a case in Indiana. The state has a Form called a 1043 which is filled out and signed by the parties. If a dispute has existed, a Section 15 Agreement is more inclusive and able to close out more remedies and rights than a State Form 1043.

OUR JOB IS TO MAKE YOUR JOB EASIER

**We encourage you to contact us with questions!!
Laws evolve, forms are updated-we can help keep you current!**

Aimee Beauchamp
Director of Client Relations
219 794-1888
aabeauchamp@kopkalaw.com

THANK YOU!!

Copyright KPDE 2012 All rights reserved.
Materials herein do not constitute legal advice or legal representation.



Remember, cases are fact specific. One size does not fit all. We are here to answer your questions, and run through the logic on situations you may be facing in the workplace. Do not hesitate to contact us to help you navigate the waters of Indiana Worker's Compensation.