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**PENNSYLVANIA
WORKERS'
COMPENSATION
QUICK REFERENCE
GUIDE**

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Pennsylvania Workers' Compensation Quick Reference Guide

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I. Exclusive Remedy

The Workers' Compensation Act is the exclusive remedy of the Employee against the Employer and Insurer for compensation arising from a work injury.

Exceptions:

Retaliatory Claim: In Schick v. Shirey 716 A.2d 1231 (Pa. 1998) the Pennsylvania Supreme Court held that a Claimant may have a cause of action against his employer for termination in retaliation for filing a workers' compensation claim.

Dual Capacity: Applies where the employee had two different roles where it held itself out to the public and owed a duty of care to all persons separate and apart from the employment relationship. See Snyder v. Pocono Medical Center, 690 A.2d 1152 (Pa. 1997).

II. Definition of a Work Injury

Work injury shall be construed to mean an injury or disability to an employee, regardless of his previous physical condition, *arising in the course of employment and related thereto* and such disease or infection that naturally results from the injury or is *aggravated, reactivated or accelerated by the injury*; and wherever death resulting from such injury and its resultant effects, and occurring within three hundred weeks after the injury.

The term "injury arising in the course of his employment," as used in this article, shall not include an injury caused by an act of a third person intended to injure the employee because of reasons personal to him, and not directed against him as an employee or because of his employment; nor shall it include injuries sustained while the employee is operating a motor vehicle provided by the employer if the employee is not otherwise in the course of employment at the time of injury; but shall include all other injuries sustained while the employee is *actually engaged in the furtherance of the business or affairs of the employer*, whether upon the employer's premises or elsewhere, and shall include all injuries caused by the condition of the premises or by the operation of the employer's business or affairs thereon, sustained by the employee, who, though not so engaged, is injured upon the premises occupied by or under the control of the employer, or upon which the employer's business or affairs are being carried on, the employee's presence thereon being required by the nature of his employment. Section 301(c)(1) 77 PS §411.

A. Essential Elements of a Compensable Injury:

- i. Timely notice;
- ii. Employee status/defined as the right to control;
- iii. Injury arising within course and scope of employment and related thereto;
- iv. Disability from work duties due to injury; and
- v. Medical proof of work relationship where not obvious.

B. Jurisdiction

Section 101 of the Act states that the Act shall apply to all injuries occurring within the Commonwealth. The extraterritorial provisions provide under §305.2 for the filing of a Pennsylvania claim where an employee is injured while working outside the territorial limits of the state, if his employment is:

- i. Principally localized in this state; or
- ii. He is working under a contract of hire made in this state for employment not principally localized in any state; or
- iii. He is working under a contract of hire made in this state for employment principally localized in another state whose workers' compensation law is not applicable to his employer

Section 305.2(D)(4)(iii) requires that an employee domiciled in PA spend substantial amount of their working time in PA.

Court concluded there was no jurisdiction over a claim where the claimant was a resident of PA but the incident occurred in New Jersey and Employer's principle place of business was Alabama. Also considered was the fact that although the employee drove miles in PA, he spent only a fraction of his time in PA and he signed a WC agreement placing jurisdiction in Alabama. When an injury occurs outside of PA, such an agreement will be given full force and effect per Section 305.2(d)(5). When injury occurs in PA, such an agreement will not apply as PA WC Act prevails. Watt v. WCAB (Boyd Bros. Transp.), 123 A.3d 1155 (Pa. Cmwlth. 2015). 77 P.S. § 411.2(d)4).

Under Section 305(2)(c), an Employer not insured in PA but insured in another state is principally liable for payment of workers' compensation benefits. In Salvadori v. WCAB (UEGF), 151 A.3d 278 (Pa. Cmwlth 2016), Claimant, truck driver, was injured in PA and filed a claim in PA. When no insurance was identified, a claim was filed against the UEGF. During litigation, the UEGF established that Employee was injured under Ohio law, Employer was insured under Ohio law and Claimant was entitled to benefits thereunder. Therefore, the UGEF cannot be held liable for nonpayment of compensation.

Maritime Employees: Accidents occurring while working as an electrician on a Navy vessel in the Navy Yard fall within the exclusive jurisdiction of the federal Longshore and Harbor Workers' Compensation Act. Savoy v. WCAB (Global Associates), 145 A.3d 1204 (Pa. Cmwlth 2016).

C. Timely Notice

Under §311 of the Act, unless employer has actual knowledge of injury, employee shall give notice within 21 days after the injury. No compensation should be due until such notice be given and no compensation shall be allowed where such notice is not given within 120 days of occurrence of injury.

Where injury is due to daily aggravation, each day constitutes new injury. Therefore, notice, if timely given, is within 120 days from last date of work. Zurn Industries v. W.C.A.B. (Bottoni), 755 A.2d 108 (Pa. Cmwlth. 2000).

D. Employment Status/Relationship

Only an employee as defined by Section 104 of the Act may be entitled to workers' compensation benefits. "Employee" has been held to be consistent with the concept of a master/servant relationship.

i. **Exceptions:**

- a. **Casual Employee:** An individual whose work is both casual in nature and not in the regular course of the business of an employer is not entitled to benefits under the Act.
- b. **Home Workers:** Section 104 excludes home workers who are not under the control or management of the employer.
- c. **Domestic Service Workers:** The Act excludes domestic service workers unless the employer has purchased coverage for these workers.
- d. **Agricultural Workers:** These individuals are excluded from coverage unless the employer is otherwise covered by the Act which would apply where the employer has both agricultural and non-agricultural employees; if during the calendar year the employer pays wages to one or more employee for agricultural work totaling \$1200 or more; or if the employer furnishes employment to one or more employee in agricultural labor on 30 or more days during a calendar year.
- e. **Conscientious Objectors:** Section 304.2 of the Act allows employer to file an application with the Department to exempt certain employees.
- f. **Minor Employees:** Individuals under the age of 18 may receive workers' compensation benefits.
- g. **Volunteer:** An individual who is established to be a volunteer is not considered an employee under the Act. Brookhaven Baptist Church v. WCAB (Halverson), 871 A.2d 193 (Pa. 2006).

ii. **Individuals Included:**

- a. **Statutory Employer:** An individual may be considered an employee of an employer under the doctrine of statutory employer. In limited circumstances, particularly where a general contractor on a construction site is in control or possession of the premises, they are liable for the claim of an injured worker of a sub-contractor unless the sub-contractor has workers' compensation insurance. If the sub-contractor does not have coverage, the employer "next up the ladder" from the immediate employer becomes liable for payment of benefits due to the injured employee. McGrail v. WCAB (County of Lackawanna), 605 A.2d 1109 (Pa. Cmwlth. 1992).
 - 1. Commonwealth has held that a franchisor is not a statutory employer of an employee working for the franchise where franchisor's main business is the sale of the restaurant franchise to franchisees. Saladworks LLC v. WCAB (Gaudioso & Uninsured Emplrs. Guar. Fund), 124 A.3d 790 (Pa. Cmwlth. 2015).
- b. **Illegal Alien:** In the Reinforced Earth Company v. WCAB (Astudillo), 810 A.2d 99 (Pa. Cmwlth. 2002), decision found undocumented workers are considered employees under the Act. Pennsylvania has developed case law with respect to the issue of illegal and undocumented workers. In 1998, the Pennsylvania Commonwealth Court held that in the context of employers' Petition for Suspension with respect to an illegal alien, that

an employer need only establish a change in medical condition and does not need to establish work availability for undocumented workers to be entitled for suspension.

More recently, the Commonwealth Court in Kennett Square Specialties v. WCAB (Cruz), 31 A.3d 325 (Pa. Cmwlth. 2011), has held that an adverse inference as to a Claimant's citizenship drawn by a WCJ from Claimant's assertion of the 5th Amendment privilege is not on its own sufficient to support a finding that the Claimant was an undocumented worker. Therefore, benefits could not be suspended. The fact that a worker is undocumented does not preclude the individual from being found an employee entitled to benefits under the Act.

E. Course and Scope

Under Section 301 (c)(1) of the Act, injuries that occur within an employee's course and scope of employment and are compensable:

(1) where an employee, whether on or off the employer premises, is injured while engaged in furtherance of the employer's business affairs or

(2) although not engaged in the furtherance of the employer's business affairs, the employee is either on the premises occupied or under the control of employer or upon which employer's business affairs are carried out and the employee is required to be present on the employer's premises by nature of their employment and the employee sustains injuries caused by the condition of the premises or by operation of the employer's business affairs thereon. WCAB (Slaughaupt) v. U.S. Steel Corp., 376 A.2d 271 (Pa. Cmwlth. 1977). *See analysis of Course and Scope Defense to Claims as set forth below in Section IV of outline.

F. Disability

An employee is considered disabled under the Pennsylvania Workers' Compensation Act as the result of a work related injury where the employee is unable to perform date of injury position without restriction, occasioned by wage loss where no alternative work is available that affords the employee employee's regular earnings equal to the employee's Average Weekly Wage which is calculated under §309 of the Act.

Key Concepts:

- i. **Injury**: Section 301(c)(1) defines an injury to include "any injury to an employee, regardless of his previous physical condition, arising in the course and scope of employment and related thereto" including aggravations, reactivation, acceleration or death resulting from injury. 77. P.S. § 411(1).
- ii. **Aggravation**: The Court has held that "if an incident materially contributes to a work-related injury, a new injury, or aggravation, has occurred." C.P/ Marin Ford, Inc. v. WCAB (Dzubur), 767 A.2d 1164 (Pa. Cmwlth 2001).

- iii. **Occupational Diseases:** §301(2) of the Act provides that the term “injury” includes occupational disease as defined in §108 of the Act which defines specific compensable occupational diseases and their causes as well as all other diseases:
- (1) to which the Claimant is exposed by reason of employment, and
 - (2) which are causally related to the industry or occupation, and
 - (3) the incidents of which is substantially greater in that industry or occupation than in the general population. §301(2) see §108.

a. The General Assembly enacted a distinct limitations period in Sections 301(f) and 301(c)(2) of the Act (77 P.S. §§ 414 and 411(2), respectively):

1. Under Section 301(c)(2), the disability or death that is the basis for the claim for compensation must occur or manifest within 300 weeks after the last date of employment in an occupation or industry to which there is exposure to the hazard. Fargo v. WCAB (City of Philadelphia), 148 A.3d 514 (Pa. Cmwlth. 2016).
2. Under Section 301(f), compensation pursuant to cancer suffered by a firefighter shall only be to those firefighters who have served four or more years in continuous firefighting duties, who can establish direct exposure to a carcinogen referred to in Section 108(r) of the Act (77 Pa. Stat. Ann. § 27.1(r)) relating to cancer by a firefighter and have successfully passed a physical examination prior to asserting a claim under this subsection or prior to engaging in firefighting duties and the examination failed to reveal any evidence of the condition of cancer.

Notwithstanding the limitation under Section 302(c)(2) with respect to disability or disease having to occur within 300 weeks after the last date of employment, claims filed pursuant to cancer suffered by firefighters under Section 108(r) may be made within 600 weeks after the last date of employment in an occupation or industry to which there is exposure to the hazards of disease. The presumption under Section 301(f) shall only apply to claims made within the first 300 weeks. Hutz v. WCAB (City of Philadelphia), 2140 C.D. 2015 (Pa. Cmwlth 2016).

- i. Claimant made a claim for occupational squamous cell carcinoma in his right vocal cord. The Court found that where Claimant does not establish that such an injury is a Group 1 Carcinogen, it is not an occupational disease under Section 108(r) and the presumptions of Section 301(f) are unavailable. In such cases, the claim must be pursued under Section 108(n), which requires the Claimant to prove all elements of the Claim Petition. Capaldi v. WCAB (City of Philadelphia), 152 A.3d 1107 (Pa. Cmwlth. 2017).
- ii. Act 46, which took effect in 2011, allows cancer claims by firefighters to be made within 60 weeks after the last date of exposure. However, this provision does not apply retroactively to claims filed before the enactment of Act 46. Claims filed prior to the enactment of Act 46 are governed by the 300 week limitation of Section 301(c)(2). City of Warren v. WCAB (Haines), ___ A.3d ___ (Pa. Cmwlth. 2017).

- iii. Under Section 301(f), any claim made by a voluntary firefighter must be based on evidence of direct exposure to a carcinogen referred to in Section 108(r) as documented by reports filed pursuant to Pennsylvania Fire Information Reporting System. Claim denied in Steele v. WCAB (Findlay Township), 155 A.3d 1173 (Pa. Cmwlth 2017) for voluntary firefighter’s failure to produce such evidence of direct exposure while working.
- iv. Claimant/Firefighter must prove that their alleged condition is a type of cancer caused by the Group 1 carcinogens to which they were exposed to in the workplace to establish an occupational disease. Once a firefighter establishes that his type of cancer is an occupational disease, then they may take advantage of the statutory presumption in § 301(e) and (f) of the Act, 77 Pa. Stat. Ann. §§ 1-1041.4, 2501-2708. 77 Pa. Stat. Ann. §§ 413 and 414.

The presumption relieves the firefighter of the need to prove that his cancer was caused by his workplace exposure and not another cause as long as the firefighter can show four years of continuous service and the absence of cancer prior to that service, he is entitled to compensation under § 301(f) of the Act. City of Philadelphia Fire Dept. v. WCAB (Sladek), 144 A.3d 1011 (Pa. Cmwlth. 2016); Demchenko v. WCAB (City of Philadelphia, No. 2164 C.D. 2015 (Pa. Cmwlth 2016)); Hutz v. WCAB (City of Philadelphia), 2140 C.D. 2015 (Pa. Cmwlth 2016). *Sladek is currently pending appeal to the Supreme Court of Pennsylvania.

- v. A non-listed disease can be compensated as an injury under Section 301(c)(1). In Kimberly Clark Corporation v. WCAB (Bromley), 161 A.3d 466, (Pa. Cmwlth. 2017), the Claimant, a long-standing employee, was exposed to chemicals resulting in bladder cancer. His widow filed a Claim Petition based on the theory that cumulative exposure was a substantial factor in the employee’s development of bladder cancer. The Court found Claimant met his burden that his disease was a repetitive/cumulative type injury by way of exposure to carcinogenic agents in the workplace over an extended period of time. The Court further found that Claimant’s injury that caused his death was within 300 weeks of his last exposure.

iv. **Psychological Conditions:** A claimant, under Claim Petition, bears the burden of establishing all elements of claimant’s Petition, including disability. Disability caused by psychological elements may be considered to be an injury under the Act and, therefore, compensable if the other elements needed to establish a claim are met, and it falls into three discrete areas:

- (1) physical stimulus causing psychic injury (physical/mental);
- (2) psychological stimulus causing physical injury (mental/physical);
- (3) psychological stimulus causing psychic injury (mental/mental).

a. **Physical/Mental:** Post-traumatic psychological disabilities brought about by work-related physical injuries are compensable. County of Dauphin v. WCAB (Davis), 582

A.2d 434 (Pa. Cmwlth. 1990). It is not necessary for the employee to prove that she suffered a physical disability that caused the mental disability, but rather only to show that a physical stimulus resulted in the mental disability. Donavan v. WCAB (Academy Med. Realty), 739 A.2d 1156 (Pa. Cmwlth. 1999). More than a de minimis physical injury and medical treatment is required for application of the physical/mental standard. Murphy v. WCAB (Ace Check Cashing, Inc.), 110 A.3d 227 (Pa. Cmwlth. 2015).

- b. **Mental/Physical:** Psychological stress that results in a "purely physical injury" falls into the mental/physical category and proof of abnormal working conditions is not required. Panyko v. WCAB (U.S. Airways), 888 A.2d 724 (Pa. 2005).
- c. **Mental/Mental:** Claimant's alleged psychological injury likely fall into this category. The seminal case for mental/mental claims is Martin v. Ketchum, Inc., 568 A.2d 159 (Pa. 1990). This case stands for the proposition that an employee claiming a psychiatric disability due to emotional, non-physical stimuli at work has a greater burden of proof than the employee claiming physical injury or physical stimuli causing a resultant emotional injury. Claimant's burden that must be met is that the work-related stress must be caused by actual objective abnormal working conditions, as opposed to subjective, perceived, or imagined employment events.

The Pennsylvania Supreme Court in Hershey Chocolate Co. v. Workmen's Compensation Appeal Board (Lasher), 546 Pa. 27, 682 A.2d 1257 (1996), reaffirmed the standard the Court had set forth in Martin: The Commonwealth Court essentially has identified two different impetuses that trigger psychic injury in the absence of a physical stimulus--either a specific extraordinary event or abnormal working conditions of a longer duration. In PA Liquor Control Board v. WCAB (Kochanowicz), 108 A.3d 922 (Pa. Cmwlth. 2014), the Court found a singular extraordinary event to be an abnormal working condition. In this case, the remanded decision found robbery as a singular extraordinary event and benefits granted.

1. The Pennsylvania Supreme Court in the matter of Davis v. W.C.A.B. (Swarthmore Borough) 561 Pa. 462, 751 A.2d 168 (Pa. 2000) citing prior precedent stated that, "To recover Workers' Compensation benefits for a psychic injury, a Claimant must prove by objective evidence that he has suffered a psychic injury and that such injury is other than a subjective reaction to normal working conditions." Martin v. Ketchum, Inc., 523 Pa. 509, 568 A.2d 159 (1990). Further, "[E]ven if a Claimant shows actual, not merely perceived or imagined, employment events and have precipitated psychic injury, Claimant must still prove the events to be abnormal in order to recover." Wilson, 669 A.2d at 344.

Finding that mental injury is due to work environment must be supported by substantial competent evidence showing causal nexus between complained of events and the medical condition. Frog Switch & Manufacturing Co. v. WCAB (Johnson), 106 A.3d 292 (Pa. Cmwlth. 2014).

2. Stated another way, a claimant seeking workers' compensation benefits because of a mental stimulus resulting in a disabling psychic injury must show that she has suffered a psychic injury in that the injury is more than a subjective

reaction to normal working conditions. Davis v. WCAB (Swarthmore Borough), 751 A.2d 168 (Pa. 2000).

3. In classifying working conditions as normal or abnormal, there is no bright line test or a generalized standard. See Rag (Cyprus) Emerald Res., L.P. v. WCAB (Hopton), 912 A.2d 1278 (Pa. 2007). Rather, one must consider the specific work environment of the Claimant. Id. "In assessing whether work conditions are abnormal, we must recognize that the work environment is a microcosm of society. It is not a shelter from rude behavior, obscene language, incivility, or stress." Philadelphia Newspapers, Inc. v. WCAB (Guaracino), 675 A.2d 1213 (Pa. 1996) (the Court held that verbal abuse from a supervisor which reprimanded an employee on one occasion did not amount to an abnormal working condition.)
4. Generally, in mental/mental injury cases, corroborative evidence is required to support the Claimant's description of the abnormal working environment that caused the injury. Donovan v. WCAB (Academy Med. Realty), 739 A.2d 1156 (Pa. Cmwlth. 1999). If, however, actual events are described as occurring and found by the WCJ to have occurred, corroborative evidence is not required. Id. at 1163.
5. In the case of RAG (Cyprus) Emerald Res., L.P. v. WCAB (Hopton), 912 A.2d 1278 (Pa. 2007), a mine worker was sexually harassed by his supervisor on at least 3 occasions when he made crude sexual comments toward him, which was corroborated by co-employees. The Court considered this "harassment" in the context of a miner's job, noting that there were other instances of joking and horseplay which did not amount to abnormal working conditions. The Court found that the WCJ had properly awarded benefits finding that the incidents created abnormal working conditions as the incidents in question were not normal joking or mere uncivil behavior but rather constituted a course of conduct on the part of a supervisor that was clearly calculated to cause severe emotional distress.
6. Further, in the case of Cmty. Empowerment Ass'n v. WCAB (Porch), 962 A.2d 1 (Pa. 2008), the Court held that religious and sexual harassment (specifically multiple sexual advances by her supervisor) rose to the level of an abnormal working condition for a social services case manager. The WCJ below had credited the testimony of the Claimant over that of her supervisor, and the Court then held that the circumstances of the sexual harassment was not acceptable in this professional type environment.

G. Medical Proof of Causation

The Pennsylvania Workers' Compensation Act provides that in order for a claimant to establish compensable disability absent an obvious causal connection between the medical condition and the employment, unequivocal medical testimony establishing a link between the cause and the condition must be established. Lewis v. Commonwealth of Pennsylvania, 508 Pa. 360 498 A.2d (1995).

WCJ did not abuse discretion when dismissing Claim Petition without prejudice where *pro se* employee was given specific instructions as to what is needed and deadlines to be met. Roundtree v. WCAB (City of Phila.), 116 A.3d 140 (Pa. Cmwlth. 2015).

A lack of personal knowledge as to the Claimant's condition prior to seeing a medical provider is not fatal to the competency or credibility of a medical opinion as medical experts are permitted to base their opinion on the medical reports of other providers, which they customarily rely upon in the practice of their profession. Ingrassia v. WCAB (Universal Health Services Inc.), 126 A.3d 394 (Pa. Cmwlth. 2015).

Where Claimant has presented primary medical testimony, which was equivocal and insufficient to meet their burden, and they failed to schedule the deposition of an additional expert to sustain their burden within a reasonable time, the WCJ may preclude the expert's deposition. Swigart v. WCAB (City of Williamsport), 131 A.3d 117 (Pa. Cmwlth. 2015).

A claimant's delay in obtaining an expert medical opinion based upon a claimant's disregard of a WCJ deadline without any due circumstances beyond their control is an appropriate basis for dismissal of the petition with prejudice. Northtec LLC v. WCAB (Skaria), 147 A.3d 63 (Pa. Cmwlth. 2016).

III. Benefits Under Pennsylvania Workers' Compensation Act

For compensable injuries, the Pennsylvania Workers' Compensation Act provides for wage loss as well as medical benefits. In the event of work related death, the Act also provides for payment of death benefits to certain classes of dependents as defined under Section 307. In addition to these benefits, the Act additionally provides for certain scheduled specific loss benefits for loss of use of extremities, vision, hearing loss and disfigurement that may under certain circumstances be received in addition to wage loss benefits.

A. Total Disability – Inability to perform available work with full wage loss

For total disability, the Pennsylvania Workers' Compensation Act in Section 306(a)(1) generally provides for payment of 2/3 of an individual's wages as calculated under Section 309 beginning after the seventh day of total disability and payable for the duration of total disability, but in no instance may it be more than the maximum compensation payable for the year in which the injury occurred.

For injuries occurring in 2016, the maximum compensation rate is in the amount of \$978.00 per week and for 2017 the maximum is \$995.00 per week. Each calendar year is also subject to a 90% total disability rate if the average weekly wage is below a certain threshold. For 2016 injuries, total disability will be 90% of wages if such wages are \$543.32 or less, and in 2017 the 90% threshold is \$552.77 and below. Each year also has a "mid-tier" fixed total disability rate.

In 2016, all claims involving weekly wages between \$543.33 and \$733.50 are compensated at \$489.00 per week. In 2017, all claims involving weekly wages between \$552.78 and \$746.25 are compensated at \$497.50 per week. Absent signed Agreement by the parties, order of the Court, or proper modification via Notification, Employer is liable for payment of total disability benefits in accepted claims unless the employee is employed or actually receiving wages.

B. Partial Disability – Claimant has earning capacity less than date of injury AWW

Section 306(b)(1) provides for payment of partial disability benefits. If a Claimant returns to work with restrictions earning less than the pre-injury average weekly wage, such Claimant is entitled to partial disability benefits paid at 2/3 the difference between the average weekly wage and the actual earnings.

Partial disability benefits are not subject to the 90% threshold or the “mid-tier” range applicable to total disability benefits, but are always paid at 2/3 of the wage differential up to the yearly maximum rate. Partial disability benefits may also apply without an actual return to work pursuant to litigation in circumstances where the Court imputes an earning power to a Claimant either based on an actual job offer or a theoretical labor market survey. A Claimant may receive a maximum of 500 weeks of partial disability benefits. Section 306(a), 77 P.S. 511.

A Claimant who returns to the time of injury job with restrictions that do not require a modification of duties, is considered “without restriction” and where due to economic downturn there is a loss of overtime, the employee performing work without restriction is not entitled to partial disability benefits. Trevdan v. WCAB (Pope), (Pa. Cmwlth. 2010).

Claimant suffered a work injury and was released to modified duty. Employer made modified duty work available with no wage loss and Claimant returned to the position. Subsequently, she voluntarily accepted another a position specifically created by Employer for Claimant resulting in a wage loss. Claimant filed a Claim Petition alleging partial disability, which was granted finding that her loss of wages in the new position was a result of her work injury. Key factor in the Court’s determination was that Claimant did not seek out the new position. Rather, it was specifically created and offered to her. Holy Redeemer Health System v. WCAB, (Lux), __A.3d__ (Pa. Cmwlth. 2017).

C. Scheduled Specific Loss Chart

	Section of Act	Nature of Injury	Benefit Period	Healing Period
Extremities	306(c)(1)	Hand	335 weeks	20 weeks
	306(c)(2)	Forearm	370 weeks	20 weeks
	306(c)(3)	Arm	410 weeks	20 weeks
	306(c)(4)	Foot	250 weeks	25 weeks
	306(c)(5)	Lower leg	350 weeks	25 weeks
	306(c)(6)	Leg	410 weeks	25 weeks
	306(c)(9)	Thumb	100 weeks	10 weeks
	306(c)(10)	First finger	50 weeks	6 weeks
	306(c)(11)	Second finger	40 weeks	6 weeks
	306(c)(12)	Third finger	30 weeks	6 weeks
	306(c)(13)	Fourth finger	28 weeks	6 weeks
	306(c)(17)	Great toe	40 weeks	12 weeks
	306(c)(18)	Other toes	16 weeks	6 weeks
Loss of Sight	306(c)(7)	Eye	275 weeks	10 weeks
Hearing Loss	306(c)(8)	Binaural hearing loss in excess of 10%	26-260 weeks	10 weeks
Disfigurement	306(c)(22)	Permanent scarring of the head, face, or neck	Up to 275 weeks	None

i. **Key Concepts:**

- a. Resolution of injury to specific loss benefit only is permissible where there is no injury separate and apart from the specific loss.
- b. Benefits paid weekly after Total Disability paid but paid concurrently when partial disability being paid.

- ii. **Specific Loss/Multiple Losses:** An award of ongoing total disability benefits is permissible as opposed to an award of specific loss benefits where claimant fails to identify any reason consistent with the Act as to why specific loss benefits would be more financially advantageous. In cases where specific loss of both legs results from work injury, total disability is presumed. WCAB's authority to determine whether to alter presumption of total disability benefits is based on optimizing benefit to employee. Arnold v. WCAB (Lacour Painting, Inc.), 110 A.3d 1063 (Pa. Cmwlth. 2015).

Holding does not envision preferential treatment but instead requires that multiple specific loss benefit awards related to one work incident be paid consecutively with aggregated terms and the rate set according to Section 306(a).

- a. No penalty awarded where Employer initially pays specific loss benefits concurrently, then unilaterally begins paying at total temporary disability rate, but paying specific losses consecutively. Multiple specific losses arising from a single occurrence should be aggregated and paid consecutively. Fields v. WCAB (City of Phila.), 104 A.3d 79 (Pa. Cmwlth. 2014).
- b. Specific loss award appropriate because left hand injury separate and apart from spine and left shoulder injuries. Specific loss benefits to be paid after total temporary disability ends. No credit/offset for SS retirement; Employee had applied for benefits and had been approved when he turned 62, which was 18 days before the work injury. Pocono Mountain Sch. Dist. v. WCAB (Easterling), 113 A.3d 909 (Pa. Cmwlth. 2015).

D. Death Benefits – The widow, children and certain other dependents at time of fatal injury of an employee who dies as a result of a work injury may be entitled to death benefits as set forth in Section 307 of the Act.

Pennsylvania does not recognize common law marriage after 2003. PNC Bank v. W.C.A.B., 831 1269 (Pa. Cmwlth. 2003) Adopted by Statute effective 1/2/2005.

Burden of proof on deceased employee's alleged common law spouse to prove marriage by "clear and convincing evidence." Common law marriage contract does not require specific form of words, only proof of an agreement to enter into the legal relationship of marriage. Elk Mountain Ski Resort, Inc. v. WCAB (Tietz), 114 A.3d 27 (Pa. Cmwlth. 2015)

E. Calculation of Wage Loss/Average Weekly Wage (AWW) – Calculation of the AWW is as set forth under § 309 of the Act. Ordinarily the Statement of Wages form must be submitted with a NCP, Agreement for Compensation, or NTCP. A copy must also be sent to the injured employee.

2016 - 2017 – 2018

Maximum: \$978.00 01/01/16	Maximum: \$995.00 01/01/17	Maximum: \$1,025.00 01/01/18
\$1,467.00 ↕ 66 2/3% \$733.51	\$1,492.50 ↕ 66 2/3% \$746.26	\$1,537.50 ↕ 66 2/3% \$768.76
\$733.50 ↕ \$489.00 \$543.33	\$746.25 ↕ \$497.50 \$552.78	\$768.75 ↕ \$512.50 \$569.44
\$543.32 or ↕ 90% Less	\$552.77 or ↕ 90% Less	\$569.43 or ↕ 90% Less

The average weekly wage benefits rates are to be calculated based upon wages earned at the time the injury manifests itself (2007), as opposed to wages at the time of the incident that led to the manifestation of the injury (1979) with respect to an eye injury case. Lancaster General Hospital v. WCAB (Webber-Brown), No. 69 map 2010 (Pa. May 29, 2012).

Where Claimant sustains an injury two weeks after being hired, Section 309(d.2) cannot be used to calculate wages. Calculation must reflect economic reality of employee’s pre-injury earning experience and must be calculated based on earnings during actual time worked. In this case, although employed for two weeks, Employer only had work available for Claimant for one. Anderson v. WCAB (F.O. Transport and UEGF), 111 A.3d 238 (Pa. Cmwlth. 2015).

SUB paid is included in the calculation of average weekly wage ordinarily paid under a collective bargaining agreement. However, unemployment compensation earnings are not includable in the Section 309 average weekly wage calculation. Bucceri v. WCAB (Freight Car America Corp.), 31 A.3d 985 (Pa. Cmwlth. 2011).

Seasonal Employment vs. Itinerant Agricultural Laborer: In determining whether a worker is a seasonal worker, the Court has found that the nature of the work governs as opposed to the period during which work is performed. In Toigo Orchards, LLC and Nationwide Insurance Company v. WCAB (Gaffney), ___ A.3d ___ (Pa. Cmwlth. 2017), the Court considered whether a tractor driver hired to move bins during the apple picking season was a seasonal employee as argued by Employer. The Court found the Claimant was engaged in “itinerant agricultural labor” and that he was a temporary tractor-trailer driver for the apple harvest and not a seasonal employee under Section 309(e). In making this finding, the Court noted that itinerant farm laborers travel from state to state to harvest crops. Although one season may end, they may carry out their work year round through such travel.

Claimant's AWW was properly calculated by dividing his total gross earnings by the weeks he worked.

Wages Fixed by the Week: Where an employee's wages are fixed by the week, the average weekly wage must be calculated pursuant to Section 309(a) of the Act. In Lidey v. WCAB (Tropical Amusements, Inc.), 157 A.3d 22 (Pa. Cmwlth. 2017), Claimant was paid a fixed rate at the time of injury. Prior to the injury, he was paid differently. The Court determined that his AWW was to be calculated according to how he earned his wages on the date of injury.

F. Offsets to Wage Loss Benefits Under the Act

Employer may assert offset against weekly wage loss benefits under Section 204 (a) of the Act for post-injury receipt of old age social security benefit, severance benefit, pension benefits, and unemployment compensation benefit. Offsets do not apply to death and scheduled specific loss benefits under the Act.

Verification forms should be issued to Claimant at the initiation of payment of benefits and thereafter at 6 month intervals. Forms LIBC-750 Employee Report of Wages of Physical Condition, which requires the employee to report offset items received; and LIBC-760, Employee Verification of Employment, Self-Employment, or Change in Physical Condition, are used for this purpose.

- i. Employer is entitled to a 100% credit for net unemployment compensation benefits received.
- ii. Old age social security benefits provide for 50% net offset for old age social security benefit received after compensable work injury.
- iii. Pension and severance benefits provide for a 100% offset for the net amount paid to the employee by the employer responsible for the work injury.
 - a. In Harrison v. WCAB (Commonwealth of Pennsylvania), __ A.3d __ (Pa. Cmwlth. 2017), Claimant elected a joint and survivor Employer funded annuity for he and his wife. Employer presented evidence from the benefit administrator that the calculation of offset is based upon the employee's maximum single life annuity. Claimant argued that he received less wages as a result of his annuity option and that if he had chosen another available option, he would have earned more per month. The Court found this immaterial holding that despite Claimant's selection, the Employer was not receiving a corresponding reduction in the amount it was required to fund the annuity. Under Section 2014(a), Employer is entitled to offset of full amount funded by Employer. 34 Pa. Code § 123.8(a).
- iv. LIBC-756- Employee's Report of Benefits for Offset form, may be used to effectuate offset. The form must be filed with the Claimant at least 20 days prior to the assertion of the credit. Reg. Section 123.4 (b).
- v. Failure to return verification of employment within 30 days: If employee fails to return to the completed verification form, LIBC-760, within 30 days of receipt, employer may suspend benefit payments until the completed form is returned. Section 331.1 (g). Suspension of benefits for non-compliance to LIBC-760 request is accomplished by issuance of form LIBC-762, Notice of Suspension for Failure to Return LIBC-760.
 - a. Employer is entitled to retrospective offset where due diligence exercised in sending LIBC form. Offset can be taken unilaterally without filing a Petition to

Suspend/Modify. Gelvin v. WCAB (Pennsylvania State Police), 120 A.3d 473 (Pa. Cmwlth. 2015).

- b. Parent company paying Total Temporary Disability benefits can take offset under Section 204(a) for pension benefits funded by its wholly-owned subsidiary. Stapp v. WCAB (Fairpoint Communications, Inc.), 99 A.3d 598 (Pa. Cmwlth. 2014).
- c. Employer is entitled to net amount of pension benefit received by Claimant under Sect. 204 of the Act. Philadelphia Gas Works v. WCAB (Amodei), 964 A.2d 963 (Pa. Cmwlth. 2009).
- d. Actuarial testimony has been held sufficient to establish an employer's claim for offset for disability pension benefit received by a Claimant under Section 204 of the Act. Consolidation Coal Company v. WCAB (Albni), (Pa. Cmwlth. 2010).
- e. Actuarial science evidence may be admitted to establish Employer's entitlement to pension credit. Commonwealth v. WCAB (Harvey), Supreme Court of Pa. 2010.
- f. Furlough benefits are not subject to a Section 204 credit. Kelly v. WCAB (U.S. Airways Group, Inc.), (Pa. Cmwlth. 2007).
- g. Employer must supply Claimant with a new "Employees Report of Benefits" form every six months to remind and require Claimant to update reporting of benefits subject to offset. The purpose is to prevent Claimant to being subject to large retrospective offsets if several years pass before he had last received the form. Muir v. WCAB (Visteon Systems, LLC), (Pa. Cmwlth. 2010).

G. Medical Benefits – Employer shall pay for related, reasonable, and necessary medical expenses for the accepted work injury to be paid in accord with the requirements of the Act. Section 306 (f.1). There is no waiting period for medical benefits.

An Employer may not refuse preapproval of surgery during litigation of a Termination Petition without filing a UR to review the proposed surgery without being awarded Supersedeas or ordered to do so. McLaughlin v. WCAB (St. Francis Country House), 808 A.2d 285 (Pa. Cmwlth. 2002).

- i. **Panel Providers:** Under Section 306(f.1)(1)(i), employees are required to treat with physicians designated on Employer's panel during the first 90 days that follow an injury as long as written notice is provided to the employee that treatment with the panel is required. 77 P.S. § 531(1)(i).

Employers must provide written notice to employees and obtain written acknowledgments that such notice was received at the time of hire as well as the time of injury or as soon as the circumstances allow after the time of injury. Institution-Somerset v. WCAB (Kirchner), 805 A.2d 633 (Pa. Cmwlth. 2002).

Employer is liable for chiropractic treatment if Employer panel does not include a chiropractor provider and treatment with a chiropractor is indicated for injury. Martin v. WCAB (Emmaus Bakery), 652 A.2d 1301 (Pa. 1995).

- ii. **Time of Payments:** Payment of medical bills in accepted claims must take place within 30 days of receipt of bills and records from health care providers unless there is a dispute as to

the reasonableness, relatedness or necessity of such bills and a UR is filed within the 30-day period to challenge the same.

- iii. **Cost Containment:** Under Section 306(f.1)(3)(i) fee caps are placed on the amount an Employer or Carrier is liable to pay for medical benefits or treatment under the Act. Specifically, medical expenses may be no more than 113% of the applicable Medicare reimbursement mechanism, or if no such reimbursement mechanism exists for a particular service, payment must be 80% of the amount most often charged for similar services by medical providers within a given geographic area. 77 P.S. § 531(3)(i). Payment of pharmaceuticals is limited to 110% of the average wholesale cost of product. 77 P.S. § 531(3)(vi).

Where medical expenses are paid initially by a health insurer, the liable carrier or Employer is obligated to reimburse the health insurer any difference between the repriced amount and the amount paid by the health insurer. Westinghouse Electric Corp. v. WCAB (Weaver), 823 A.2d 209 (Pa. Cmwlth. 2003).

The cost containment provisions of the Act apply to treatment of an out-of-state provider. Section 127.129.

- iv. **Fee Review:** Section 306(f.1)(5) provides a process for medical providers to challenge the amount and or timelines of payment for medical services under the Act. Time restrictions require medical providers to file such challenge within 30 days following notice of a dispute regarding provider bills or within 90 days of the original billing date. Disputes filed are heard by hearing offices and are adjudicated by de novo hearings, administrative decisions and appeal procedures as outlined in the medical cost containment regulations at 127.251-127.261.
- v. **Closed Period Awards:** When a closed period is awarded by a WCJ, Employer is required to pay medical only until the end of the closed period, not until the day of the Order. Mashuda Corp. v. WCAB (Ferrari), 706 A.2d 374 (Pa. Cmwlth. 1998).
- vi. **Reimbursement for Travel Expenses for Work Related Treatment:** Travel for reasonable, necessary and related treatment over 100 miles will be reimbursed if such treatment is not available within the geographic area in which the employee generally travels for treatment. Holly v. WCAB (Lutheran Home), 735 A.2d 153 (Pa. Cmwlth. 1999).
- vii. **Self-Referrals:** Under Section 306(f.1)(3)(iii), medical providers are prohibited from referring a patient for certain treatment if the provider has a financial interest in the entity receiving the referral.

IV. Defenses to Claims Made Under the PA Workers' Compensation Act

A. Course and Scope

Under § 301 (c)(1) of the Act, injuries outside of an employee's course and scope of employment are not compensable.

Mere applicant is not an employee for purposes of the Act. Moburg v. WCAB (Twining Village), (Pa. Cmwlth. 2010).

i. **Injuries Occurring at Employee Home**

- a. Claimant failed to establish that a work-from-home decedent was injured in the course and scope of his employment, when decedent was found unresponsive sitting at his desk in his home while on sick leave, despite having received some work-related calls or emails that day. Claimant's arguments for decedent's "activities" at the time of injury were found "speculative at best." Werner v. WCAB (Greenleaf Srv. Corp.), 28 A.3d 245 (Pa. Cmwlth. 2011).
- b. Fatal claim premised upon decedent suffering a heart attack at home two days after receiving a letter terminating his employment led to a denial of benefits based on the rationale that the Commonwealth Court read the Act as not imposing upon employers the risk of compensation for injuries that result from a decision to terminate an employee. Little v. WCAB (Chevrolet), 23 A.3d 637 (Pa. Cmwlth. 2011).

ii. **Going and Coming Rule:** Injuries occurring while commuting to and from work are not within the course and scope of employment.

- a. Exceptions to the Coming and Going Rule
 1. Employee has no fixed place of work
 - i. Injuries sustained by doctor found compensable when injury was sustained while doctor was traveling between two fixed places of employment as required by job duties. Ruth Fam. Med. Ctr. V. WCAB (Steinhouse), 718 A.2d 397 (Pa. Cmwlth. 1998).
 2. Employment contract includes regular transportation to and from work
 - i. Injury found compensable where Employer provided Employee a vehicle and paid for all operating costs of vehicle with the purpose of allowing Employee to travel to job sites between Employer facilities and Employee home for the benefit of Employer's business affairs. Schiavone v. Aveta, 41 A.3d 861 (Pa. Super. 2012).
 3. Employee is on a special assignment for Employer
 - i. Injuries found compensable when suffered by Employee on the way home to eat before attending an evening appointment for Employer. Bradshaw v. WCAB (Bell Hearing Aid Ctr.), 641 A.2d 664 (Pa. Cmwlth 1994).
 - ii. Injury found compensable where on-call electrician took a call from supervisor to discuss problem at plant as employee was found to be responding to an implied request to come to Employer facility. City of Philadelphia v. WCAB (Stewart), 728 A.2d 431 (Pa. Cmwlth. 1999).
 4. Special circumstances are such that the Employee is furthering business affairs of Employer at time of injury
 - i. Injury sustained by Employee while attending a social event at the home of a co-employee found compensable when event held for specific Employer related purpose and the event fosters goodwill among employees. Tredyffrin-Easttown Sch. Dist. V. Breyer, 408 A.2d 1194 (Pa. Cmwlth. 1979).

iii. **Abandonment of Job Duties**

- a. A cafeteria worker jumping down a flight of stairs on Employer's premises during lunch break is not considered within the course and scope of employment and therefore was ineligible for benefits. Penn State University v. WCAB (Smith), (Pa. Cmwlt. 2011).
- b. Employee does not abandon employment when attempt to render aid to another is made. Commonwealth Court affirmed award of benefits finding employee was in the furtherance of employer's business at the time the emergency arose and remained within the course and scope of employment although rendering aid is not a part of his normal work duties. Pipeline Systems v. WCAB, 120 A.3d 397 (Pa. Cmwlt. 2015). 77 P.S. § 1031(a)(10).
- c. Claimant assigned specifically to watch a Lexus during the US Open, was not in the course and scope of his duties when injured 500-600 feet away from the vehicle; court did not address violation of positive work order issue. Lewis v. WCAB (Andy Frain Servs.), 29 A.2d 851 (Pa. Cmwlt. 2011).
- d. Injuries sustained while running to employee's car in the middle of a work shift to attend to a family emergency do not occur in the course and scope of employment and are not compensable in the absence of any showing that such injuries were caused by a condition of the premises or by operation of Employer's business. Quality Bicycle Products Inc. v. WCAB (Shaw), 1570 C.D. 2015 (Pa. Cmwlt. 2016).
- e. Claimant, a HVAC technician, was injured when he jumped from a roof. Employer denied the claim asserting that Claimant jumping from the roof was an intentional act. The Court granted the claim finding that Claimant was a traveling employee and that he jumped off the roof only to exit his worksite, which was a necessary component of his job, an action that advanced Employer's business. The evidence established that Claimant used a ladder provided by other workers to ascend the roof but at the end of the day, the ladder had been removed. Although jumping from the roof was not advisable, the Court did not find that the action rose to an abandonment of employment removing him from the course and scope of employment. Wilgro Services Inc. v. WCAB (Mentusky), 2017 Pa. Commw. LEXIS 415 (Pa. Cmwlt. 2017).

iv. **Personal Comfort Doctrine**

- a. Claimant was injured in the course of her employment while driving an airport tug to meet her mother, who was bringing feminine products to her after the claimant realized that she had started her menstrual period and did not have these items. Claimant had permission for her departure for the purpose of attending to her personal comfort so that she could continue to serve the employer's interest. Typically, an activity that does not further the affairs of the employer will take the employee out of the course and scope of employment and serve as a basis for denial of the claim by the WCJ.

However, the personal comfort doctrine holds that the employee whether on the premises or off, does not stray from the course of employment for a momentary departure from active work to attend to some "personal comfort" such as using the restroom, fixing one's hair, or changing contact lenses or make-up. The injury was found to be within the course and scope of employment and the Claim Petition was granted. Starr Aviation v. WCAB (Colquitt), 155 A.3d 1156 (Pa. Cmwlt. 2017).

v. **Furtherance of Employer Interest**

- a. Claimant found within the course and scope of his employment while performing duties distinct from his typical work duties. Claimant's work duties included filling catering carts for departing aircraft. His co-worker complained to him that Employer's locker, used to store Employer's cleaning materials and equipment for loading and unloading trucks, was falling apart. Claimant volunteered unused lockers, which he had at his residence, to replace Employer's deteriorating locker. Claimant then transported the lockers with his personal truck from home to work, clocked into work and began his workday. When his co-worker arrived, they removed the locker from Claimant's truck. In doing so, Claimant was injured.

The Court found "[a]n employee may be doing something other than the exact work assigned to him, and he may not be strictly at his assigned work, either as to time or place, yet the continuity of the employment is not broken unless such activity is wholly foreign to his employment or constitutes an abandonment thereof." City of New Castle v. WCAB (Sallie), 546 A.2d 132 (Pa. Cmwlth. 1988). Claimant established that he made a genuine attempt to advance Employer's interest, that Employer received a benefit from Claimant's efforts and that Employer accepted the benefit. His injury was found compensable. Grill v. WCAB (U.S. Airways), 151 A.3d 697 (Pa. Cmwlth 2016).

- b. Claimant's injuries as sustained when attacked by her adult son while sleeping in her bedroom did not occur in the course and scope of her employment and were not compensable even though she was paid by a state-funded program to provide attendant care in her home to her son. The Court found the Claimant was not in furtherance of her employment as a caretaker at the time of attack as it was the middle of the night in her bedroom and such was not required by her employment. O'Rourke v. WCAB (Gartland), 125 A.3d 1184 (Pa. Cmwlth. 2015).

- vi. **Special Circumstance Exception:** Claimant was employed as Director of Maintenance. He sustained an injury while traveling to work on a day when he attempted to call out sick but was urged by Employer to come to work to fix an issue. Claimant became nauseous while on the way to work, veered off the road and was injured. The Court found Claimant's injury compensable under the "special circumstances" exception to the Going and Coming Rule in that Claimant planned to take a sick day but for Employer's special need. The Court noted that Claimant was an on-call employee who was paid from door to door when responding to on-call assignments. Lutheran Senior Services Mgt. Co. v. WCAB (Miller), 154 A.3d 892 (Pa. Cmwlth. 2017).

B. Injury as a Result of Intoxication

Section 301 (a) 77 P.S. § 431 excludes from compensability injuries as a direct result of and caused by intoxication.

A medical expert need not use magic words to establish that but for the intoxication the injury would not have occurred but instead it is whether the medical opinion as a whole is enough to support an inference of causation. Lindstrom v. WCAB (Pa. Cmwlth. 2010).

C. Violation of Law

Section 301(a), 77 P.S. § 431 excludes from compensability injury or death caused by employee's violation of law even if all other requirements of the Act are met.

D. Violation of Direct Order

Injuries caused by violation of a positive order, which takes an employee out of the proper scope of his employment, may preclude compensability of a work injury.

Claimant injured striking a bowling ball with a sledgehammer, while waiting for a truckload of asphalt and after being told to "knock it off, or stop" by his floor man, violated a positive work order, and thus his injuries were not compensable. Habib v. WCAB (John Roth Paving Pavemasters), 29 A.3d 409 (Pa. Cmwlth. 2011).

E. Statute of Repose

The Act provides that the filing time is three years from the date of injury. It may be extended by three years after the date of last medical expense paid without admission. Section 315 of the Act, 77 P.S. § 602.

F. Casual Employment

Section 104, 77 P.S. § 222 exempts employees "whose employment is casual in character and not in the regular course of the business of the employer."

The courts have held that employment is casual in character where it is occasional, irregular, or incidental as distinguished from regular and continuous. Brookhaven Baptist Church v. WCAB (Halvorson), 912 A.2d 770 (Pa. 2006).

G. Independent Contractor: An independent contractor is not an employee because of the absence of a master/servant relationship. This may serve as a bar to compensability of an injury, but may subject employer to civil liability for damages due to negligent injury.

Where injury occurs before employee signs Independent Contractor Agreement, the employee is considered an employee. Staron, d/b/a Lee's Metal Roof Coatings & Painting v. WCAB (Farrier), 121 A.3d 564 (Pa. Cmwlth. 2015).

Claimant, personal care taker, filed a Claim Petition. Employer defended on basis of no employment relationship. The Claim Petition was denied based on factors showing Claimant's daily tasks were controlled by the client, not the company/Employer. Edwards v. WCAB (Epicure Home Care, Inc. and SWIF), 134 A.3d 1156 (Pa Cmwlth 2015).

Elements of Construction Workplace Misclassification Act:

- (1) Individual has a written contract to perform services;
- (2) Individual is free from control or direction in their performance of services under the contract for services and in fact; and
- (3) Individual is customarily engaged in an independently established trade, occupation, profession or business in which they perform such services.

CWMA Cases:

(1) Claimant was injured before the CWMA went into effect. The Court determined that the CWMA did not apply retroactively but its factors were instructive in determining how to evaluate the matter. Following enactment of the CWMA, the CWMA is determinative in construction workplace cases as to whether an individual can be classified as an independent contractor. The CWMA replaces the common law analysis, which focused on the right to control test to distinguish between employees and independent contractors in construction workplace claims. In order for an individual to be classified as an independent contractor, each CWMA's requirement must be satisfied. Suarez v. D&R Construction, __ A.3d __ (Pa. 2017).

(2) Claimant injured while remodeling a restaurant before it opened for business. The Court found the CWMA did not apply because Employer was in the restaurant business as opposed to the construction industry. Dept. of Lab. and Indus. v. WCAB (Lin and E. Taste), 155 A.3d 103 (Pa. Cmwlth. 2017).

(3) Claim Petition dismissed based on finding the Claimant, a roofer, to be an Independent Contractor. Factors considered by the Court included that Claimant signed an Independent Contractor Agreement, which was never terminated and included a "defined scope of work", Employer did not direct the manner in which the Claimant was to perform work, Claimant provided similar services to other companies, he held himself out through advertising as an "independent roofing contractor," and Claimant's insurance application identified himself as the owner of his business. In consideration of this case, the Court also considered Claimant's argument that a later answer filed by Employer required the WCJ to find he was an employee. Even in the case of a late answer, the Court found that Claimant still held the burden of proving all elements to support an award of compensation finding the existence of an employer/employee relationship is a question of law not deemed admitted by a late answer to a claim petition. Hawbaker v. WCAB (Kriner's Quality Roofing Services and Uninsured Employers Guaranty Fund); 159 A.3d 61 (Pa. Cmwlth 2017).

H. Personal Animosity

An injury caused by the act of a third person causing the injury of an employee because of reasons personal to third person not directed against the employee because of the employment, is excluded from compensability under Section 301 (c)(i) 77 P.S. § 411 (i) of the Act.

I. Intentional Self-Inflicted Injury or Death

An intentionally self-inflicted injury or death is not compensable under the Act. Section 301 (a), 77 P.S. § 431.

J. Notice

If an employee does not provide notice and if the employer does not have actual knowledge of the occurrence of work injury within 120 days of the date of injury, "no compensation shall be allowed." Section 311, 77 P.S. 631. Time for giving notice may be extended where the employee is reasonably delayed in the discovery of the injury.

The Pennsylvania Supreme Court reversed the Commonwealth Court in the matter of Gentex Corp. v. WCAB (Morack), 23 A.3d 528 (Pa. July 20, 2011). The Supreme Court reversed and found that Claimant provided adequate notice under Section 311 of the Act when she left a

voicemail reporting “work-related problems”. The Court stresses the need to look at collective communications between Claimant and Employer when considering the issue of notice under the Act.

The Commonwealth Court reversed and remanded the Board’s decision denying benefits and finding a claimant’s statement to their supervisor that they had increased back pain due to working additional hours constituted sufficient notice of an injury under the Act. Gahring v. WCAB (R and R Builders), 128 A.3d 375 (Pa. Cmwlth. 2015).

K. Medical Examination

Employer, in addition to testing causation, can further contest extent in duration of disability utilizing challenges to Claimant’s medical evidence as well as conducting medical examination with respect to the claim for disability as well as conducting Independent Medical Examination for the purpose of challenging continuation of accepted or awarded disability through Independent Medical Examination under §314, 77 P.S. §615 of the Act.

At any time after the injury to the employee, if requested by the employer or insurer, the employee must submit to a physical examination at a “reasonable” time and place by a physician selected and paid by the employer/insurer. §314, 77 P.S. §651.

Although not explicitly stated in the statute, “reasonable” intervals for the medical examination are approximately every six months, by custom and practice.

A second IME may be appropriate within six months, if the initial medical examination warrants further investigation or if the injured worker has sustained injuries which require separate examinations by separate medical specialists. Upon cause shown, a workers’ compensation Judge may order a second medical examination, at any time.

If an employee refuses to attend a medical examination, the employer/insurer may file a Petition for Physical Examination – LIBC499, to obtain an order from a judge directing claimant to attend a medical examination. This Petition does not alter claimant’s right to receive Workers’ Compensation Benefits. The separate remedy of suspension of benefits, until the claimant complies with a court-ordered medical examination, must be accomplished via a separate Petition for Suspension, LIBC378. See Maranc v. WCAB (Bienenfeld), 751 A.2d 1191 (Pa. Cmwlth. 2000).

V. Accepting and Denying the Claim

The employer/insurer must accept or deny the claim for disability within 21 days of the employee notice or the employer knowledge of the work injury. The first installment of Workers’ Compensation benefits must be paid no later than the 21st day after the employee notice or employer has knowledge of disability. Section 406.1, 77 P.S. § 717.1.

A claim may be accepted by issuing one of the following forms:

- i. **LIBC-495- Notice of Compensation Payable**, an NCP, is the mechanism for acceptance of an undisputed work injury and undisputed disability or wage loss.

- ii. **LIBC-495- Notice of Compensation Payable- “Medical Only Claim,”** an MONCP, may be filed to accept medical liability only for a work injury by checking off the box added to denote the “medical only” case on form LIBC-495.
- iii. **LIBC-336- Agreement for Compensation** is a bilateral agreement which may be utilized to provide for acceptance of benefits and can also serve to acknowledge initiation and suspension of benefit payment after a finite period of wage loss entitlement. This form requires the signature of the employee.
- iv. **LIBC-337- Supplemental Agreement-** may be used also to accept a claim through a bilateral agreement but this form is not recommended for that purpose. It is ordinarily used to agree to a suspension, modification, or recurrence of benefits during a finite period of disability.
- v. **LIBC-501- Notice of Temporary Compensation Payable (TNCP)-** the TNCP commences payment of weekly benefits and medical expense without resulting in admission of liability. TNCP must be completed and filed within 21 days of notice or knowledge of injury. If carrier does not file a notice to revoke the TNCP (LIBC-502) within 90 days of first date of disability the Bureau will convert the TNCP to an NCP. The TNCP form states that revocation must occur within 90 days of first date of disability and within 5 days of the last payment. Section 406.1 (d)(5)(i).
 - 1. The Act does not expressly allow for nor disallow serial NTCP’s when additional injuries are discovered after the first NTCP is issued. Carrier did not violate Act when a second NTCP was issued. Aldridge v. WCAB (Kmart Corp.), 113 A.3d 861 (Pa. Cmwlth.), *appeal denied*, 117 A.3d 298 (Pa. 2015).
- vi. **LIBC- 502- Notice Stopping Temporary Compensation and LIBC-496- Notice of Denial-** must be filed to revoke NTCP. **LIBC-496- Notice of Workers’ Compensation Denial-** the denial notice must be issued within 21 days after notice or knowledge of the employee’s injury. Admissions made by employer on an NCD may be binding upon the carrier in litigation. NCD must contain a description of the alleged injury and the full and complete reasons for the denial. Section 406.1.
 - 1. A Claimant who receives a NCD checking off Box 4 maintains the full burden of a Claim Petition to secure benefits under the Act. Morrison v. WCAB (Rothman Institute), (Pa. Cmwlth. 2011).
 - 2. Employer is not subject to a penalty where NCD was filed admitting injury and denying wage loss where a WCJ determined that Claimant’s injury did not cause wage loss and her subsequent surgery was unrelated. Zuchelli v. WCAB (IUP), 35 A.3d 801 (Pa. Cmwlth. 2011).
 - 3. The filing of a second NTCP marked as “amended” or “corrected” will amend a formerly filed NTCP without need to file additional Bureau documents. Church v. WCAB (Wayne Cook t/a Cook Landscaping and Fleming Termite and Pest Control), 135 A.3d 1153 (Pa. Cmwlth. 2016).
 - 4. In determining whether a Notice Stopping Temporary Compensation is timely, the Court found that “time is calculated from when compensation must be

paid, not the last period for which compensation is payable ended.” Jones v. WCAB (Villanova University), Pa. Commw. No. 1531 C.D. 2016.

VI. Litigation of Claims

A. Claim Petition

A Claimant initiated Petition with the burden of proof upon Claimant. Where a claim has been denied in whole or part, an employee must file a Claim Petition to establish a compensable injury and entitlement to wage loss and/or medical benefits. Under such Petition, the burden falls upon Claimant to establish:

- (1) a compensable injury that is
- (2) suffered while in the course of employment
- (3) related thereto, and
- (4) results in disability. (Section 301 (c)).

This burden also includes proving extent of disability. Inglis House v. W.C.A.B. (Redy), 634 A.2d 592 (PA. 1993). If there is no obvious connection between an employee’s medical condition and his work activities, the claimant has the burden of establishing such a connection through unequivocal medical testimony. Lewis v. WCAB (Pittsburgh Board of Education), 508 Pa. 360, 498 A.2d 800 (1985); Fotta v. WCAB (U.S. Steel/USX Corp.), 534 Pa. 191, n.2, 626 A.2d 1144 n.2, (1993); and Cardyn v. WCAB (Heppenstall), 517 Pa. 98, 534 A.2d 1389 (1987).

- i. **Late Answer:** Absent proof of when Employer received Claim Petition sent to incorrect address, there is no proof that the Answer was untimely. Proof of mailing raises a presumption that the mailed item was received only if shown that the item was mailed to the correct address. Washington v. WCAB (National Freight Industries, Inc.), 111 A.3d 214 (Pa. Cmwlth. 2015).
- ii. **Joinder of Concurrent Employer:** Claimant’s testimony that they are concurrently employed is sufficient to trigger the time requirement for filing a Joinder Petition to join the concurrent Employer. Under 34 Pa. Code §131.36, a Joinder Petition must be filed no later than 20 days after notice at a hearing where evidence of a joinder is sought. Jackson v. WCAB (Radnor School District et al), 148 A.3d 939 (Pa. Cmwlth. 2016).
- iii. **Unreasonable Contest:** Under §440 of the Act, counsel fees may be imposed against employer where employer fails to establish reasonable basis for contest under the Act.
 - a. The proper remedy to recoup attorney fee’s not provided in a Board Decision is the filing of an appeal. The subsequent filing of a Review Petitions is not an available remedy. Byfield v. WCAB (Phila. Housing Authority), 143 A.3d 1063 (Pa. Cmwlth. 2016).
 - b. Because the Supersedeas Fund is limited to refunding “payments of compensation,” a WCJ has authority to issue an Order directing claimant’s counsel to refund unreasonable contest counsel fees to Employer, when the Employer is successful on appeal of the underlying petition where the unreasonable contest attorney fees were

awarded. County of Allegheny v. WCAB (Parker), No. 82 C.D. 2016, filed December 20, 2016.

B. Review Petition: A Claimant or Employer initiated Petition.

- i. Under Section 413(a), a Petition to Review can be filed to correct mistakes in the Operating Document (Supplemental Agreement, Notice of Compensation Payable) as to the description of injury, AWW or date of injury. The burden of proof falls upon the filing party to establish the existence of “a material mistake of fact or law” at the time that the Operating Document was issued. Anderson v. WCAB (Pennsylvania Hosp.), 830 A.2d 636 (Pa. Cmwlth. 2003). 77 P.S. § 771. A Petition to Review can also be filed to review medical treatment or billing.
- ii. Also under Section 413(a), a Petition to Review may be filed by an employee to allege a change, modification or expansion in the nature of injury at some time subsequent to the issuance of the Operating Document. 77 P.S. § 772. The burden is on the employee where there is no obvious connection between the alleged condition and accepted injury to prove that the alleged condition is work related. A specific medical diagnosis is not required to expand the description of injury. City of Philadelphia v. WCAB (Fluek), 898 A.2d 15 (Pa. Cmwlth. 2006); Meadow Lakes Apts. V. WCAB (Spencer), 894 A.2d 214 (Pa. Cmwlth. 2006).
- iii. Similar to a Claim Petition, under a Review Petitions seeking to add additional injuries, Claimant must establish a compensable injury that is suffered while in the course of employment, related thereto and resulting in disability through unequivocal medical testimony. Jeanes Hospital v. WCAB (Hass), 872 A.2d 159 (Pa. 2005); Lewis v. WCAB, 498 A.2d 800 (Pa. 1985); Section 301(c) 77 P.S. §411(1).

C. Reinstatement: A Claimant initiated Petition with the burden of proof upon Claimant. Claimant under §413 of the Act has the right to seek reinstatement of benefits where disability has recurred under the Act.

- i. A Claimant seeking a reinstatement of indemnity benefits must prove that his or her earning power is once again adversely affected by his or her work related injury and that the loss of earning power is a continuation of that which arose from his original claim. Bufford v. WCAB (North America Telecom), 2 A.2d 548 (Pa. 2010). Claimant has the burden of proof.
- ii. The Pennsylvania Commonwealth Court in the matter of Verity v. WCAB (The Malvern School), (Pa. Cmwlth., 356 CD 2011, filed October 11, 2011) has held that Claimant in the context of a Reinstatement Petition need only establish that disability has reoccurred with respect to the work injury and need not show that disability is through no fault of his own to establish entitlement to reinstatement of benefits. Employer may present evidence establishing in defense of the Reinstatement Petition circumstances establishing that Claimant is not otherwise entitled to benefits including termination from employment due to cause.

- iii. Claimant not barred by collateral estoppel in a Reinstatement Petition where the alleged worsening of condition is a separate and distinct issue than those previously litigated. Lindemuth v. WCAB (Strishock Coal Co.), 134 A.3d 111 (Pa. Cmwlth 2016).
- iv. Where claimant has two disabling injuries in 1995 and 1999 and benefits are suspended on the 1999 injury because of receipt of temporary total disability (“TTD”) on the 1995 injury, a Petition to Reinstate TTD for 1999 injury not time-barred if claimant files within 3 years of last payment of compensation on 1995 injury, as that TTD is considered to be payment in lieu of receiving same for the second (1999) totally disabling injury. Kane v. WCAB (Glenshaw Glass), 119 A.3d 424 (Pa. Cmwlth. 2015).
- v. Employer must reinstate benefits after the filing of an Employee Challenge Petition when a hearing is not conducted within 21 days of the filed Employee Challenge. Failure to do so constitutes a violation of the Act. Dixon v. WCAB (Medrad Inc.), 134 A.3d 518 (Pa. Cmwlth. 2016).
- vi. Jobs under a Labor Market Survey must remain open to provide employee reasonable opportunity to apply. Phoenixville Hospital v. WCAB (Shoap), 81 A.3d 830 (Pa. Cmwlth. 2013).

D. Suspension Petition

Employer initiated Petition with the burden of proof upon Employer. A suspension of compensation means that an employee has returned to work or it has otherwise been established that work is available to the Claimant without wage loss and that the work injury no longer reflects itself in a wage loss but that Claimant has a continued residual disability and that the employer remains liable for work-related medical expense.

Indemnity Benefits may be suspended based upon:

- i. **Voluntary return to pre-injury position without a wage loss/Notice of Suspension:** Section 306(b) provides for a suspension of indemnity benefits when an employee returns to work at equal or greater wages than their AWW. 77 P.S. § 512. Employer is not obligated to prove full recovery. An Employer is entitled to a suspension of benefits where an employee still afflicted with a physical impairment returns to their pre-injury job without restrictions. In order to affect a suspension of benefits after the voluntary return to a pre-injury position, Section 413(c) requires Employer file LIBC Form 751: Notification of Suspension accompanied by an Affidavit. 77 P.S. § 774.2.

Following issuance of a Notification of Suspension, the employee has the opportunity to challenge Employer’s assertion of return to work within 20 days with an Employee Challenge. A hearing will then be held within 21 days of challenge to address the allegations of the Notice of Suspension and Challenge. 77 P.S. § 774.2(1). The hearing is limited to the issue as to whether the employee has returned to work without a wage loss, the date the employee returned to work and whether they remain working without a wage loss. U.S. Airways v. WCAB (Rumbaugh), 854 A.2d 411 (Pa. 2004). Where an Employer suspends benefits based upon a

Notice of Suspension and the employee then stops working, Employer must file a Suspension Petition to protect their right to continued suspension.

- ii. **Proof of the Ability to Return to Work and Refusal of Job Offer:** Following receipt of medical evidence that the employee's physical capabilities have changed such that they can return to work in some capacity, Employer may offer the employee a job consistent with their physical capabilities. In order to sustain their burden seeking a suspension of benefits, an Employer must:
- a. Issue a Notice of Ability to Return to Work advising of the change in the employee's physical capabilities. This form must be issued prior to the Job Offer and should include a copy of the medical report changing the employee's physical capabilities.
 - b. A Notice of Ability to Return to Work issued after a job offer may be insufficient notice in order to sustain a modification of suspension of benefits. Secco, Inc. v. WCAB (Works), 886 A.2d 1160 (Pa. Cmwlth. 2005).
 - c. Even in the context of a Claim Petition where Employer seeks a suspension of benefits based upon job availability, the Employer must demonstrate that a Notice of Ability to Return to Work was issued when Employer receives medical clearance that the Employee may return to work. Hoover v. WCAB (Harris Masonry, Inc.), 783 A.2d 886 (Pa. Cmwlth. 2001). 77 P.S. § 512(3).
 - d. Issue a formal job letter advising the employee of available employment for which the employee has been medically cleared to return to work. See the attached Job Offer Appendix for more detail.
 - e. A job offer should include:
 - f. The "classification" of the job, e.g., sedentary, light, medium or heavy.
 - g. A statement that this is the classification of job for which claimant has been cleared to return by a physician whose name should be stated; OR, if the physician did not clear claimant for a specific classification of duties, the statement should be that the physical requirements of the job fit within the restrictions on work activities as described by a physician who should be named.
 - h. A brief description of the physical requirements of the job should be included in the letter; **OR** attached to and referenced in the letter.
 - i. A statement as to whether the work is part-time or full-time and the number of hours per day and number of days per week.
 - j. If claimant's supervisor has been instructed to accommodate any particular restriction/disability or problem, e.g., need for frequent urination, that fact should be indicated and, if possible, the method of accommodation should be noted.
 - k. The title of the job and the wage rate or salary.
 - l. A statement that the employee is qualified for the work considering his educational and vocational background
 - m. If the tendered job is at a predicted average weekly wage that is lower than claimant's pre-injury average weekly wage, then advise the employee that he will be entitled to

receive partial disability benefits based on 2/3 of the difference between his pre-injury average weekly wage and his actual earnings for a maximum of 500 weeks.

- n. Employer's burden to establish work availability following the issuance of a Notice of Ability to Return to Work and Job Offer has been outlined in Kachinski v. WCAB (Veeco Construction Company), 532 A.2d 374 (Pa. 1986). Under this standard, Employer must:
- (1) produce medical evidence of a change in physical condition;
 - (2) produce evidence of a referral to a then open job which fits the occupational category for which the claimant has been given medical clearance; and
 - (3) establish whether the Employee acted in good faith in following through on the job offer;
 - (4) if the Employee did not act in good faith, Employer is entitled to a suspension or modification.
- iii. **Refusal of Reasonable Medical Treatment:** Under Section 306(f.1)(8), an Employee forfeits their right to compensation if they refuse reasonable medical services. 77 P.S. § 531(8).

Circumstances under which benefits have been suspended for refusal to obtain reasonable medical treatment:

- a. Surgery for a herniated disc (Davis v. WCAB (Acme Mkts., Inc.), 711 A.2d 1096 (Pa. Cmwlth. 1998).
 - b. Reconstructive surgery of the ankle ligaments (Robinson v. WCAB (Lindsey), 589 A.2d 778 (Pa. Cmwlth. 1991).
 - c. Wrist fusion (Mills v. WCAB (Super City Mfg., Inc.), 588 A.2d 1350 (Pa. Cmwlth. 1991).
 - d. Supervised Physical Therapy (Crews v. WCAB (B&W Tubular Products Group), 554 A.2d 190 (Pa. Cmwlth. 1989); Byrd v. WCAB (Temco Servs. Industries), 473 A.2d 723 (Pa. Cmwlth. 1984).
- iv. **Refusal to Comply with Ordered IME**
- Under Section 314, an Employer may request an employee to submit to a physical examination at any time after an injury. 77 P.S. § 651. An employee's benefits may be suspended based upon Claimant's failure to attend Ordered Independent Medical Examination without reasonable cause or excuse. An Order may suspend indemnity and medical benefits if the Order specifically states that the award is suspending medical benefits. Where the order merely suspends compensation, the Order extends only to the suspension of indemnity. Giant Eagle, Inc. v. WCAB (Givner), 39 A.3d 287 (Pa. 2011).

- v. **Incarceration:** Under Section 306(a)(2), an Employer may suspend compensation following an Employee's incarceration. Benefits must be reinstated following the period of incarceration. 77 P.S. § 511(2).

- vi. **Failure to Complete and Return Bureau Verification Forms**

Under Section 311.1, an Employer has the right to issue Verification Forms to the Employee at six month intervals including LIBC 750 (Employee Report of Wages and Physical Condition), LIBC 756 (Employee Report of Benefits or Offsets) and LIBC 760 (Employee Verification of Employment, Self-Employment or Change in Physical Condition). 77 P.S. § 631.1; 77 P.S. § 511; 77 P.S. § 512. An Employee's failure to return LIBC 760 within 30 days can result in a suspension of benefits. Benefits must be reinstated upon ultimate production of LIBC 760.

- vii. **Voluntary Withdraw from the Workforce**

- a. An employee's benefits may be subject to suspension based upon voluntary withdrawal from the workforce where Claimant was capable of performing light duty work but stopped looking for work when he started receiving his pension benefits. Day v. WCAB (City of Pittsburgh), (Pa. Cmwlt. 2010).
- b. Employee is found to have withdrawn from the workforce but chose to reside in Portugal for more than 7 years. Therefore, Employer was not required to establish a change in medical condition in order to secure a suspension of benefits. Mendes v. WCAB (Lisbon Contractors, Inc.), (Pa. Cmwlt. 2009).
- c. Claimant does not voluntarily remove herself from the workforce by permanently moving out of the state. The factfinder cannot solely rely upon a claimant's receipt of disability pension benefits to support the suspension of benefits. Chesik v. WCAB (Department of Military & Veterans' Affairs), 126 A.3d 1069 (Pa. Cmwlt. 2015).
- d. A reinstatement of benefits may be denied where the Claimant who has retired and taken retirement pension has not searched for suitable employment. Duferco v. WCAB (Zuhosky), (Pa. Cmwlt. 2010).
- e. Evidence can be found to be insufficient to establish that Claimant intended to retire and therefore Claimant is not found to have withdrawn from the workforce. City of Pittsburgh & UPMC v. WCAB (Robinson), (Pa. Cmwlt. 2010).

- viii. **Total Disability Based Upon a Non-work Related Condition:** Employer is not required to show job availability when the Employee is totally disabled due to a subsequent non-work related condition. Schneider, Inc. v. WCAB (Bev), 747 A.2d 845 (Pa. 2000).

- a. Employer petitioning to suspend benefits on the basis that Claimant was permanently disabled due to a non-work-related petition still bears the burden of communicating a Notice of Ability to Return Work to Claimant as essential to any suspension proceeding. Struthers Wells v. WCAB (Skinner), (Pa. Cmwlt. 2010)

- ix. **Earning Power Assessment/Labor Market Survey:** See Analysis set forth below under Modification Petition, Section VI(E)(iv) of Outline.
- x. **Wage Loss Due to Economic Conditions**
Suspension Petition granted despite Claimant’s allegation of reduction of earnings after returning to work. Court held that if a reduction in earnings is due to economic conditions as opposed to a loss of earning power related to the work injury, Employer has no obligation for wage loss benefits. Donahay v. WCAB (Skills of Central Pa, Inc.), 109 A.3d 787 (Pa. Cmwlth. 2015).

E. Modification Petition

Employer initiated Petition with the burden of proof upon Employer. Similar to relief under a Suspension Petition, the modification of benefits means that the employee has returned to work or that work is otherwise available to the Claimant with a loss of earnings. However, unlike a Suspension Petition, under a Modification Petition, the employee is therefore entitled to *two thirds difference between his average weekly wage and return to work earnings and may receive potentially partial disability for a maximum of 500 weeks.*

Indemnity benefits may be modified based upon the following circumstances:

- xi. **Increase or Decrease in Disability When Employee is Not Working:** Under Section 306(b), benefits may be modified upon Employer proving that the employee’s disability has changed, been reduced or that work is available to the employee, which the employee is capable of performing. Under such circumstances, the employee’s disability status will be modified from total to partial. 77 P.S. § 512.
- xii. **Risk of Recurrence of Disability If Employee Returns to Work:** An employee may refute evidence of work availability with medical evidence that the employee could not return to their pre-injury position without risk of further physical harm unless the risk of harm is not related to the compensable injury. Farquhar v. WCAB (Corning Glass Works), 528 A.2d 580 (Pa. 1987). In order for continued compensation to be payable, the employee must establish that the underlying condition was caused by work conditions, rather than a mere aggravation of a pre-existing non-work related condition. Little v. WCAB (Select Specialty Hosp.), 113 A.3d 1 (Pa. Cmwlth. 2015).
 - a. Compensation was not payable in case where employee had pre-existing non-work related asthma, which was worsened by exposure at work, but returned to baseline even where employee was not able to return to work because his pre-existing condition would be aggravated. Bethlehem Steel v. WCAB (Baxter), 708 A.2d 801 (Pa. 1998).
 - b. Employee that could technically work pre-injury position but “should not” because of a chance that artificial knees will not last as long was not entitled to continued compensation. Mancini’s Bakery v. WCAB (Leone), 625 A.2d 1308 (Pa. Cmwlth. 1993).
- xiii. **Return to Work with Loss of Earnings:** Employer may utilize Notice of Suspension or Modification with insurer’s affidavit pursuant to Section 413 (c)&(d)- LIBC-751.
 - a. LIBC-751 must be prepared and filed with Bureau and copied to employee and their counsel and with the employer. LIBC-751 form must be filed with the Bureau within 7

days of employee's return to work. If not, it will be returned by the Bureau. Proper use eliminates the need to utilize a Supplemental Agreement, which requires the employee's signature.

xiv. **Earning Power Assessment/Labor Market Survey**

Employer may initiate Petition for Modification or Suspension under Section 413 of the Act based upon medical evidence of physical capability and vocational expert opinion that Claimant has earning capacity considering the employee's residual productive skill, education, age, and work experience, and may engage in any other kind of substantial gainful employment which exists in the usual employment area in which the employee lives within the Commonwealth of Pennsylvania.

- a. Employer requires medical evidence to support a change in disability status. The change in disability status must be communicated to the employee and properly noticed in the form of an LIBC-757, Notice of Ability to Return to Work.
- b. No requirement to issue Notice of Ability to Return to Work where employee not receiving benefits and has not started litigation. Job offer made during this period valid. School Dist. Of Phila. v. WCAB (Hilton), 117 A.3d 232 (Pa. 2015)
- c. Employer bears a burden of further establishing that employer does not have open vacant available work within Claimant's physical and vocational capabilities.
- d. Issuance of a Notice of Ability to Return to Work is considered "prompt" has been suggested to be what is reasonable under the facts of a given case as opposed to within 30 days. Melmark Home v. WCAB (Rosenberg), 496 A.2d 159.
- e. Employer is not required to conduct Labor Market Survey in another state in which Claimant has relocated. Rebeor v. WCAB, 976 A.2d 655.
- f. A second Petition for Modification based upon a Labor Market Survey is not barred by the fact that a former Labor Market Survey Petition had been denied. Linton v. WCAB (Amcass Industrial Corporation), (Pa. Cmwlth. 2010).
- g. The core evidence to a Labor Market Survey is Earning Power Assessment evidence itself. Riddle v. WCAB. Claimant's testimony as to having made application to positions found under the Labor Market Survey are not relevant to the determination as to whether or not Claimant's benefits should be modified.
- h. Non-substantive legal defects do not invalidate a WC Judge's modification of benefits with respect to valid portions of a Labor Market Survey. Marx v. WCAB (United Parcel Service), (Pa. Cmwlth. 2010).

xv. **Proof of Physical Ability and Job Offer and Modified Rate with Refusal to Return to Work**

Where an employee refuses to return to work based upon physical capacity recommendations of a physician, employer has the burden to file a Petition to Suspend or Modify Benefits via form LIBC-378.

- a. Employer must present medical evidence of change in condition and availability of work within Claimant's restrictions and that the employee has been notified under form LIBC-757, Notice of Ability to Return to Work, of his medical release, along with written notification of work availability.
- b. The Courts have sustained a finding of an employee's inability to perform a "no duty job" where Claimant's medical condition as a result of a work injury prevented him from staying awake. Channel Lock Inc. v. WCAB (Reynolds), 965 A.2d 1239.

xvi. **Impairment Rating Evaluation**

Historically, under Section 306(a.2) of the Act, an Impairment Rating Evaluation (IRE) was a tool for Employers to change the disability status of a long-term claim and place a cap on the receipt of benefits to 500 weeks by converting the status of the employee from total to partial disability based upon a finding under the 4th Edition of the AMA guidelines for permanent disability that the employee was less than 50% disabled under the guidelines.

However, in the Supreme Court of Pennsylvania's recent June 20, 2017 Decision, Protz v. WCAB (Derry Area School Dist.), __ A.3d __ (Pa. 2017), the Court found Section 306(a.2) unconstitutional noting that the requirement to apply the most recent version of the AMA violated the non-delegation clause of the Pennsylvania Constitution. The Court struck down the entire section from the Act. As a result of the Court's Decision, Employers must turn to other tools to cap exposure including Independent Medical Examinations, Labor Market Surveys and Utilization Reviews.

What is yet to be determined in the wake of the Supreme Court's Decision in Protz is whether the holding will have a retroactive application. The Decision also poses challenges to how insurers set reserves and whether the elimination of Impairment Rating Evaluations will translate into higher settlement values in permanent disability cases.

F. Utilization Review Petition: A Claimant or Employer initiated Petition.

Following receipt of an unfavorable (in whole or part) Utilization Review Determination, the aggrieved party may file a Petition for Review of Utilization Review before a WCJ seeking determination as to whether the treatment under review is in fact reasonable, necessary and related to the work injury.

In litigating a Petition for Review of Utilization Review, the burden of proof is on the Employer to prove that the medical treatment is not reasonable, related and necessary to the work injury. AT&T v. WCAB (DiNapoli), 816 A.2d 355 (Pa. Cmwlth. 2003). The Employer must also prove there is a reasonable contest to the challenge. U.S. Steel Corp. v. WCAB (Luczki), 887 A.2d 817 (Pa. Cmwlth. 2005).

Under Section 306(f.1)(6)(iv), the Utilization Review Determination becomes part of the record in litigation of a Petition for Review of Utilization Review. 77 P.S. § 531(6)(iv).

A Utilization Review Determination must explain the basis for the Reviewer's determination as to whether the treatment was reasonable or necessary in order to be upheld. The fact that a provider's records under review lack sufficient information regarding the treatment purpose, objective and outcome is a reasonable basis for a Utilization Review determination that treatment is unreasonable and unnecessary. Womack v. WCAB (School Dist. of Philadelphia), 83 A.3d 1139 (Pa. Cmwlth. 2014).

G. Termination Petition

Employer initiated Petition with the burden of proof upon Employer. A termination of compensation means that the employee has fully recovered from the work injury and can return to their date of injury occupation without restriction and that they are in no further need of medical treatment for the accepted work injury. An Employer may initiate a Termination Petition upon medical evidence that the employee is fully recovered from the work injury and the Workers' Compensation Judge may adjudicate whether Claimant is fully recovered.

Under Section 413(a), an Employer seeking to terminate workers' compensation benefits bears the burden of proving by substantial medical evidence either that the Employee's disability has ceased, or that any current disability arises from a cause unrelated to the employee's work injury. Miller v. WCAB (Peoplease Corp.), 29 A.3d 869 (Pa. Cmwlth. 2011). An Employer does not have the burden of establishing full recovery from injuries new and distinct from those described in the NCP. City of Philadelphia v. WCAB (Fluek), 898 A.2d 15 (Pa. Cmwlth. 2006). 77 P.S. § 772.

Employer met its burden in second attempt for a termination where Employer's medical expert opinion was supported by Claimant's activities and WCJ's personal observations, which constituted sufficient evidence to establish a change in condition since previous Decision denying prior Termination Petition. Baumann v. WCAB (Kellogg Co.), 147 A.3d 1283 (Pa. Cmwlth. 2016).

A Workers' Compensation Judge may amend the description of injury where a Review Petition is not pending where an employer has initiated Termination proceedings. Cinram Mfg. v. WCAB (Hill), (Pa. Cmwlth. 2009).

Where an employer institutes termination proceedings, a Claimant outside the three years of the most recent payment of compensation may still have the description of a work injury expanded. Pizza Hut v. WCAB (Mehalick), (Pa. Cmwlth. 2011).

An Employer's medical opinion as to full recovery based upon review of medical records and Claimant's representation that she had no complaints referable to her right arm as well as Claimant's failure to testify that she suffered any injury from her lower right arm constituted substantial evidence supporting termination of benefits. Stancell v. WCAB (LKI Group, LLC), (Pa. Cmwlth. 2010).

An employee who sustained conjunctivitis due to her work environment who had never had that condition in the past was able to defeat Employer's Petition for Termination where the credited evidence reflected that her condition would recur if Claimant returned to work. City of Philadelphia v. WCAB (Whale-Campbell), 34 A.3d 871 (Pa. Cmwlth. 2011).

An employee who develops allergic asthma and ongoing sensitivity to a chemical due to her work, a condition that prevents her from returning to her pre-injury job, the claimant has continuing disability benefits despite her return to otherwise normal pulmonary functions. Little v. WCAB (Select Specialty Hospital), 113 A.3d 1 (Pa. Cmwlth. 2015).

Section 413(a) of the Act authorizes the WCJ to amend the description of injury during litigation of any petition where the evidence presented shows that the description of injury is materially incorrect. The Commonwealth Court reversed the Board's reversal of a WCJ Order

amending a NCP to include additional injuries and found it was proper to deny a Termination Petition where the WCJ amends the description of injury finding the additional injury was part of the original work injury, not recovered and the Employer had sufficient notice of the additional injury. Walter v. WCAB (Evangelical Community Hospital), 128 A.3d 367 (Pa. Cmwlth. 2015).

H. Penalty Petition

An Employee may file a Petition for Penalties seeking an award for violations of the Act. Section 435 of the Act provides Employer and Insurer may be penalized a sum not exceeding 10% of the amount awarded for violations of the Act or Bureau regulations: provided, however, such penalty may be increased up to 50% in cases of unreasonable or excessive delays for violation of the Act or its regulations. 77 P.S. § 991(d)(1).

It is Claimant's burden to produce evidence of a violation of the Act when seeking a penalty. Sanders v. WCAB (Marriott Corp.), 756 A.2d 129 (Pa. Cmwlth. 2000). The imposition of penalties and the amount of penalties if imposed under Section 435 are discretionary. While there must be a finding as to whether there was a violation of the Act, such a finding does not mandate the imposition of a penalty. The WCJ considering the claim for penalties has sole discretion in deciding whether or not to award penalties for a violation of the Act. Campbell v. WCAB (Hards Constr. Co.), 695 A.2d 976 (Pa. Cmwlth. 1997).

Penalties and unreasonable contest awarded where an Employer denied medical bills based upon Employer's unfounded belief that the entity billing for the physical therapy was different than the entity performing the physical therapy where Employer failed to refute evidence that the entity that rendered therapy was provided in connection with a joint venture with the entity that billed for the service. Derry Township Supervisors and Selective Insurance Company of American v. WCAB (Reed), No. 751 C.D. 2016.

An Employer's financial inability to issue payment pursuant to WCJ Order does not insulate them from the imposition of penalties despite the UEGF's joinder in claim. CMR Construction of Texas v. WCAB (Begly), 2017 Pa. Cmwlth. LEXIS 398 (Pa. Cmwlth. 2017).

Actions Resulting in the Assessment of Penalties:

- i. Sending compensation checks to an old address
- ii. Failure to deduct attorney's fees consistent with WCJ's Order
- iii. Discontinue benefits even though insurer prevailed on merits of Petition
- iv. Delay or failure to timely issue wage loss benefits
- v. Delay or denial of payment for work related medical expenses
- vi. Failure to issue benefit payments while awaiting Supersedeas ruling on appeal
- vii. Failure to issue benefit payments consistent with stipulation submitted for WCJ approval; deductions made for employer sick leave payments not presented in stipulation
- viii. Six week delay in issuance of denial form
- ix. Failure to timely reimburse litigation costs
- x. Failure to pre-authorize medical treatment where insurer did not request a prospective utilization review

VII. Litigation Timelines

All litigation timelines are set by the assigned WCJ at the time of the first hearing. Timelines may depend on individual Judge practices. Individual Judge practices are posted on the PA Department of Labor's website:

<http://www.dli.pa.gov/Individuals/WorkersCompensation/wcoa/judge/Pages/default.aspx>

Claimant Oriented Petitions

Typically, on a Petition filed by Claimant, testimony will be taken from Claimant either at the time of first hearing, if within the assigned Judge's practice to hear live testimony, or by deposition. Following Claimant's testimony, Employer will have 45 days to obtain an IME. Following the first hearing, Claimant will have 90 days to complete their medical and fact witness testimony. Employer will have 90 days thereafter to complete any medical or fact evidence.

Also at the time of first hearing, the Judge will schedule the parties for mediation if believed to be fruitful and will advise as to the date of the final hearing. Whether fact witness testimony is presented live before the WCJ or by deposition can depend on the assigned Judge's practice.

Employer Oriented Petitions

Typically, on a Petition filed by Employer, testimony will be taken from Claimant either by deposition or at the final hearing depending on the assigned Judge's practice. Following the first hearing, Employer will have 90 days to complete their medical and fact witness testimony. Following the completion of Employer evidence, Claimant will have 90 days thereafter to complete any medical or fact evidence.

Similar to Claimant Oriented Petitions, at the time of first hearing, the Judge will schedule the parties for mediation if believed to be fruitful and will advise as to the date of the final hearing. Also, the presentation of fact witness testimony live at a hearing or by deposition will depend on the assigned Judge's practice.

VIII. Tools Available to Manage Cost of Claim

A. Utilization Review

Section 306 (f.1) Employer may file challenge to the reasonableness and necessity of treatment through the filing of a Request for Utilization Review within 30 days of receipt of medical bills and corresponding records utilizing LIBC-601, Utilization Review Request. Benefits may be re-priced according to a fee schedule. Denying payment of a medical bill without filing a Utilization Review can request in an award of penalties.

A former UR determination that served to expand the description of injury is not dispositive and controlling in a subsequent petition by the Claimant seeking to expand the description of injury under a review proceeding. Securitas Security Services USA v. WCAB (Shuh), (Pa. Cmwlt. 2011).

Employer liable for payment of medical expenses under Utilization Review once determination is adverse, notwithstanding filing of Petition for Review of Utilization Review Determination. Scranton School District v. WCAB (Carden), (Pa. Cmwlth. 2010).

Provider under UR sending CD-ROM did not satisfy requirement under the regulations of providing reviewing organization with Claimant's pertinent medical records under review. Shah v. WCAB (Melgrath Gasket Company), (Pa. Cmwlth. 2010).

An Employer may use an Independent Medical Examination after receipt of an adverse Utilization Review Determination as evidence in a Petition for Review of Utilization Review Determination. The post-UR examination may not, however, be used with respect to the issue of reasonableness of their contest. Road Toad v. WCAB (McLean), (Pa. Cmwlth. 2010).

When seeking review of physical therapy prescribed by a doctor and administered in the doctor's own facility under the doctor's direct supervision, the Employer must only name the doctor prescribing the physical therapy and the facility in the UR Request in order to secure a review of all of the physical therapy. MV Transportation v. WCAB (Harrington), 990 A.2d 118 (Pa. Cmwlth. 2010). The Court in Harrington reasoned that it would not make sense to separately review the same course of physical therapy which was being prescribed by the same physician and under the direction of the same physician, and potentially reaching different conclusions. The Court specifically notes that physical therapy is a different breed from treatment given by doctors who have the power to ask independently of each other.

Previous UR Determination that prescribed medications were unreasonable and unnecessary is irrelevant to determining whether employee's death from an accidental overdose of those same medications, prescribed by a doctor in the same practice, is causally related to the work injury for purposes of establishing a fatal claim under the Act. J.D. Landscaping v. WCAB (Heffernan), 31 A.3d 1247 (Pa. Cmwlth. 2011).

Whether treatment is generally accepted in the medical communities does not predetermine the UR process, it is therefore not a basis on which to deny the payment of medical bills. CVA, Inc. v. WCAB (Riley), 29 A.3d 1224 (Pa. Cmwlth. 2011).

Medical experts may testify as to reasonableness and necessity of chiropractic treatment which is under review in a Petition to Review Utilization Review Determination. Leca v. WCAB (Philadelphia School District), 39 A.2d 631 (Pa. Cmwlth. 2012).

Commonwealth Court held that Claimant's attorney was not entitled to 20% of medical bills awarded under Claim Petition. Attorney's fee applicable to indemnity benefits and not medical benefits. Righter v. WCAB (Righter Parking), 141 A.3d 628 (Pa. Cmwlth. 2016).

Reimbursement of Traumatic Care: Provider of traumatic care shall be reimbursed at 100% of the "usual and customary charge" of an accredited trauma care provider in the geographic area of the involved provider. Testimony of a carrier's repricing manager as to the use of a database to determine the usual and customary charge for traumatic care did not provide substantial evidence for reimbursement. Allegheny General Hospital v. Bureau of Workers' Comp. Fee Review Hearing Office (State Workers' Insurance Fund), 143 A.3d 449 (Pa. Cmwlth 2016).

B. Impairment Rating Evaluation

Historically, under Section 306(a.2) of the Act, an Impairment Rating Evaluation (IRE) was a tool for Employers to change the disability status of a long-term claim and place a cap on the receipt of benefits to 500 weeks by converting the status of the employee from total to partial disability based upon a finding under the 4th Edition of the AMA guidelines for permanent disability that the employee was less than 50% disabled under the guidelines.

However, in the Supreme Court of Pennsylvania's recent June 20, 2017 Decision, Protz v. WCAB (Derry Area School Dist.), __ A.3d __ (Pa. 2017), the Court found Section 306(a.2) unconstitutional noting that the requirement to apply the most recent version of the AMA violated the non-delegation clause of the Pennsylvania Constitution. The Court struck down the entire section from the Act. As a result of the Court's Decision, Employers must turn to other tools to cap exposure including Independent Medical Examinations, Labor Market Surveys and Utilization Reviews.

What is yet to be determined in the wake of the Supreme Court's Decision in Protz is whether the holding will have a retroactive application. The Decision also poses challenges to how insurers set reserves and whether the elimination of Impairment Rating Evaluations will translate into higher settlement values in permanent disability cases.

C. Labor Market Survey

See Analysis set forth below under Modification Petition, Section VI(E)(iv) of Outline.

D. Job Offer

See Analysis set forth below under Suspension Petition, Section VI(D)(ii) of Outline as well as Appendix re Job Offer.

E. Independent Medical Examination

Employer may request an Independent Medical Examination of a Claimant at a reasonable interval, often seen at 6 month intervals, by custom and practice for the purpose of testing causation or challenging continuation of accepted or awarded disability under Section 314 of the Act. 77 P.S. §615.

F. Bureau Verification Forms

Under Section 311.1, an Employer has the right to issue Verification Forms to the Employee at six month intervals including LIBC 750 (Employee Report of Wages and Physical Condition), LIBC 756 (Employee's Report of Benefits or Offsets) and LIBC 760 (Employee Verification of Employment, Self-Employment or Change in Physical Condition) to determine whether Employer is entitled to any offsets. In addition, an Employees failure to return LIBC 760 within 30 days can result in a suspension of benefits.

G. Supersedeas

Under Section 413 of the Act, Employers can apply for Supersedeas to recoup monies paid in claims prior to a favorable award under a Petition to Terminate, Modify or Suspend. 77 P.S. § 744. Supersedeas awarded in conjunction with a finding of full recovery will include the retroactive reimbursement of all medical and indemnity benefits paid as of the date of the request for Supersedeas. Employers may also request Supersedeas for reimbursement of sums paid for indemnity only with the

filing of a Suspension or Modification Petition. Supersedeas awarded in conjunction with a finding of suspension or modification will include the retroactive reimbursement of indemnity paid following the date Supersedeas was requested.

Employer must make a request for Supersedeas at the time that the underlying Petition is filed. Thereafter, a Supersedeas hearing will be held within 21 days of the assignment of the Petition. Following the hearing, the Judge may issue a Decision granting or denying Supersedeas. If a Decision is not issued, it operates as a denial of the Supersedeas request. Supersedeas can be awarded by Judge decision if evidence is available to support the allegations. Customarily, judges do not typically grant Supersedeas at the onset of a Petition. In the majority of cases, Supersedeas is awarded following litigation after application to the Supersedeas Fund.

Employers may renew their request for Supersedeas by application to the Supersedeas Fund following a favorable award under a Petition to Terminate, Modify or Suspend. Section 443(a) of the Act provides for Employer's burden to recover monies from the Supersedeas Fund. Employer must establish that

- (1) a request for Supersedeas was made in a proceeding under Section 413 of the Act or Section 430;
- (2) the request was denied;
- (3) payment of compensation continued due to the denial of Supersedeas and
- (4) the outcome of litigation determined that compensation was not in fact payable. 77 P.S. § 999.

Supersedeas can be awarded in conjunction with a Compromise and Release of a claim depending on party and Judge approval of such arrangement.

H. Surveillance Evidence: The Pennsylvania Commonwealth Court has affirmed a WC Judge's Denial of Reinstatement based upon surveillance evidence with benefits suspended as of the date the credited surveillance was conducted. *Soja v. WCAB (Hillis-Carnes Engineering Associates)*, 33 A.3d 702 (Pa. Cmwlth. 2011).

I. Subrogation

Under §319 of the Act, where the injury is caused in whole or in part by the negligence of a third party from whom the employee makes a recovery by verdict, settlement or otherwise, Employer is entitled to subrogation to the extent of compensation paid with the employer liable for pro-rated payment of counsel fees and costs required to effectuate the recovery. Employer shall pay that portion of attorney fees and other distributions that the amount of compensation payable at the time of recovery bears to the total recovery. Any additional recovery in excess of the compensation paid by Employer shall be paid to the Employee. Jurisdiction over the entitlement to subrogation is exclusively within the workers' compensation authorities.

Under Section 319, the right to subrogation is absolute to the full extent absent a finding of bad faith on the part of Employer where the Employer has not expressed willingness to compromise the lien. *Thompson v. WCAB (USF&G Co.)*, 781 A.2d 1146 (Pa. 2011); *Growth Horizons, Inc. v. WCAB (Hall)*, 767 A.2d 619 (Pa. Cmwlth. 2001).

Employee argued that the WCAB lacked jurisdiction in a pending third party action to order claimant's counsel to turn over a portion of the third-party award to a workers' compensation

insurer in satisfaction of an allegedly disputed subrogation lien. The Court found that the Employer was entitled to subrogation noting the under 77 P.S. § 771, the WCJ has the power to modify the terms of workers' compensation obligations to reflect third-party settlements or jury awards. The Act also grants a WCJ the power to award delay damages and post-verdict interest. Cox v. WCAB (Otis Elevator), 615 A.2d 878 (Pa. Cmwlth. 1992).

The failure to disclose evidence showing amount of third party recovery requires ongoing suspension of benefits until subrogation lien can be effectuated. Reed v. WCAB (Allied Signal, Inc.), 14 A.3d 464 (Pa. Cmwlth. 2015).

Right of action against third party under Section 319 remains with the injured employee. An Employer has no independent right to file suit. Liberty Mut .Ins. Co., as subrogee of George Larence v. Domtar Paper Co. v. Commercial Net Lease Realty Services, Inc., 113 A.3d 1230 (Pa. 2015).

Employee can waive future right to subrogation upon sufficient evidence presented to support waiver. Employer testimony to their understanding insufficient. Fortwangler v. WCAB (Quest Diagnostics), 113 A.3d 28 (Pa. Cmwlth. 2015).

Commonwealth Court affirmed that future credits under Section 319 afford Employers the right to indemnity and medical benefits in seeking subrogation. Whitmoyer v. WCAB (Mountain Country Meats), No. 614 C.D. 2015 (Pa. Cmwlth 2016).

Circumstances where Subrogation Applies:

- i. Claimant suffered several burns as a result of a work injury. In a third party suit, he was successful in obtaining a settlement for defective equipment that contributed to some of the burns he sustained in the injury. Employer entitled to seek subrogation, but their recovery was limited to the specific parts of the body caused by the defective equipment and not the entire injury. Serrano v. WCAB (Ametek, Inc.), 154 A.3d 445 (Pa. Cmwlth. 2017).
- ii. Employer permitted to pursue a third party action for negligence on Claimant's behalf without Claimant's direct consent so long as the action is pursued on behalf of the Claimant seeking only the amount the carrier paid to the employee in workers' compensation benefits. The Hartford Ins. Group on Behalf of Chen v. Kamara, 155 A.3d 1108 (Pa. Super. 2017).
- iii. Third party payor of medical benefits is entitled to subrogation for amounts paid before and after the effect of Act 46 (which took effect in 2011), which recognized cancer in firefighters as an occupational claim under the Act, when the claim for benefits is timely filed under the Act. In City of Philadelphia v. WCAB (Knudson), 32 PAWCLE 121 (Pa. Cmwlth. 2017), a firefighter's medical provider, Independent Blue Cross, was entitled to subrogation from the Workers' Compensation carrier for medical expenses even if those expenses occurred before the effective date of Act 46.
- iv. Employer maintains subrogation rights despite denial of Claim Petition. Kalmanowicz v. WCAB (Eastern Industries Inc.), 2017 Pa. Cmwlth LEXIS 441 (Pa. Cmwlth. 2017).

- v. Employer is not entitled to subrogation of third-party recovery under the Heart and Lung Act. Pennsylvania State Police v. WCAB (Bushta), 149 A.3d 118 (Pa. Cmwlth. 2015).
*This case is currently pending appeal to the Supreme Court of Pennsylvania.
- vi. **Uninsured Motorist:** Employer may seek subrogation against recovery of uninsured motorist benefits from a non-negligent co-worker's personal automobile policy. Davis v. WCAB (PA Social Services Union), ___ A.3d ___ (Pa. Cmwlth. 2015). Employer is not entitled to subrogation out of employee's recovery from a personal policy for underinsured benefits. Standish v. American Mfrs. Mutual Ins. Co., 698 A.2d 599 (Pa. Cmwlth. 2000).
- vii. **Medical Malpractice:** Employer may recover subrogation of a Claimant's third-party medical malpractice recovery of future medical expenses and future wage loss. Protz v. WCAB (Derry Area School District) 124 A.3d 406 (Pa. Cmwlth. 2015). In order to establish entitlement, an Employer must establish 1) the sum to which they seek subrogation was for the same compensable injury that the Employer is liable and Employer was obligated to issue payment as a result of the negligent medical treatment. Griffin v. WCAB (Thomas Jefferson Univ. Hosp.), 745 A.2d 61 (Pa. Cmwlth. 1999).
- viii. **Legal Malpractice:** Employer is entitled to subrogation from recovery in a legal malpractice action. In Poole v. WCAB (Warehouse Club, Inc.), 810 A.2d 1182 (Pa. 2002), the Court found Employer could rely upon the outcome of legal malpractice suit to establish that an injury was caused by a third part. The Court noted that the employee should not be allowed to receive double benefit through a malpractice action without allowance for the right to subrogation and that an Employer should not be obligated to make payments for the negligence of a third party.

IX. Resolution of Claims

A. Settlements

Claim may be settled by a Compromise and Release Agreement for wage loss benefits only or alternatively for full Compromise and Release for both liability for indemnity and medical under the Act. Section 449. Settlements require approval by a Workers' Compensation Judge.

A Claimant who resigned from her employment as part of a Compromise and Release Agreement voluntarily terminated her employment and is therefore ineligible for U.C. Benefits, in that quitting one's job to settle a workers' compensation case is not a "necessitous or compelling" reason for voluntary termination. Lee v. Unemployment Compensation Bd. Of Review, 33 A.2d 717 (Pa. Cmwlth. 2011).

The Commonwealth Court denied a medical provider's Penalty Petition regarding unpaid medical bills finding no Employer obligation for payment in a case resolved by Compromise and Release Agreement entered without admission of liability, no adjudication of whether the alleged work injury was related and no provision for the payment of medical bills. Schatzberg v. WCAB (Bernis Co. Inc.), 136 A.3d 1081 (Pa. Cmwlth 2016).

Awards of attorney fee in cases litigated by multiple counsel consider equitable division of awarded attorney fee between counsels.

Where first attorney was discharged after terminating initial settlement negotiations, that attorney had no reasonable expectation of attorney's fees when second counsel later negotiates and settles case. Bierman v. WCAB (Phila. National Bank), 113 A.3d 38 (Pa. Cmwlth. 2015).

Where first attorney was discharged without obtaining settlement offer and before settlement was reached, attorney was entitled to fees through date of Compromise & Release; second attorney entitled to fees on settlement. Mayo v. WCAB (Goodman Distribution, Inc.), 109 A.3d 286 (Pa. Cmwlth. 2015).

B. WCJ Decision

Section 422(a) of the Act requires a WCJ Decision to be well reasoned. In Green v. WCAB (US Airways), 155 A.3d 140 (Pa. Cmwlth 2017), the WCJ denied the Claim Petition based upon the rejection of Claimant's credibility. Such action is permissible as long as the WCJ explains the basis for the finding and makes all findings necessary to resolve issues raised by the evidence.

C. Interest: The Act requires that statutory injuries be paid of 10% on indemnity and medical due and payable under the Act.

No authority for an award of compound interest absent explicit statutory language or agreement. Compound interest is not favored in the law. Tobler v. WCAB (Verizon PA, Inc.), 120 A.3d 448 (Pa. Cmwlth. 2015).

D. Close of a Claim

Form LIBC-392, Statement of Account of Compensation Paid, must be filed at the close of claim to certify that benefits have been paid to an individual under the Act.

X. Quick Reference: Important Dates in the Life of a Claim

1. Date of Injury

2. Employer's Report of Industrial Injury – LIBC344

- 1.** Employer Report of Injury must be filed if employee is absent for one work shift or more;
- 2.** Employer must complete form and file with insurer; and
- 3.** Insurer must file report form with Bureau of Workers' Compensation

3. From Date of Accepted Injury

Transmit Bureau Verification forms LIBC750, 756, and 760 and reissue at 6 months.

4. 7 Day Wait

306(e) provides no compensation allowed for first 7 days after disability begins unless disability lasts at least 14 days, then employee is entitled to first 7 days of disability.

5. Claim Petition Answers – 20 days

An answer to a Claim Petition must be filed with the Bureau no later than 20 days following the date of the Bureau’s Notice of Assignment of a Claim Petition.

6. Twenty-one Days: Decision to accept or deny.

The employer/insurer must accept or deny the claim for disability within twenty-one days of the employee notice or the employer knowledge of the work injury. The first installment of worker compensation benefits must be paid on accepted claims no later than the 21st day after the employee notice or employer has knowledge of the disability. §406.1, 77 P.S. §717.1.

Delay by the employee providing notice to the employer or any delay in the employer’s actual knowledge of the occurrence of a work injury delays the commencement of the twenty-one day period during which the employer/insurer must accept or deny a work injury claim.

7. Payment of Awards – 30 days

A WC Judge’s award of compensation must be paid within 30 days thereof to avoid potential penalty liability under the Act.

8. When in Receipt of Medical Release Permitting Claimant to Return to Work in a Reasonable Period of Time (suggestion within 30 days)

Transmit to the employee Bureau LIBC757 Notice of Ability to Return to Work with physician’s release, particularly released by Independent Medical Examining physician sending via Regular and Certified mail.

9. Posted Panel Physicians – 90 Days

An employer may control medical for the first 90 days following first medical treatment where employer is in possession of signed acknowledgment letter by the employee at time of hire and at time of injury as to his obligation to treat with posted panel physician.

10. Notice of Temporary Compensation Payable – 90 Days

May provide payment with prejudice if Notice of Stopping and Denial is filed within 90 days of its issuance.

11. One Hundred Twenty Days Notice Rule

If the employee does not provide notice and if the employer does not have actual knowledge of the occurrence of the work injury within one hundred twenty days of the date of injury, “no compensation shall be allowed.” §311, 77 P.S. §631.

12. Independent Medical Examination – 6 Months

On an accepted Claim, an employer ordinarily is entitled to receive an Independent Medical Examination of a Claimant at a reasonable interval often seen at 6 month intervals by custom and practice.

13. After Payment of 104 Weeks of TTD Benefits

Request within 60 days of Claimant's receipt of 104th week of benefit payment, designation of IRE physician by the Bureau utilizing LIBC766 – Request for Designation of Physician to Perform Impairment Rating Evaluation.

14. Three-Year Statute of Limitations

If the parties do not agree to the compensation payable to an employee or if the employee does not file a petition within three years after the date of injury, the claim "shall be forever barred." §315, 77 P.S. §602.

NOTICE: This document is intended as a quick reference to the most commonly applicable provisions of the Pennsylvania Workers' Compensation Act. **It should not be taken as a substitute for competent legal advice.** Other sections of the Act, and the court decisions interpreting them, can be quite confusing and arcane. Always consult an experienced Workers' Compensation attorney for guidance in determining the relevant portions of the Act and the best way to proceed under it.

Pennsylvania Workers' Compensation
Quick Reference Guide
Appendix of Forms

Quick Reference for LIBC Forms

- 48. **LIBC-495** – Notice of Compensation Payable
- 50. **LIBC-336** – Agreement for Compensation
- 52. **LIBC-337** – Supplemental Agreement
- 54. **LIBC-501** – Notice of Temporary Compensation Payable
- 56. **LIBC-502** – Notice Stopping Temporary Compensation
- 58. **LIBC-496** – Notice of Workers' Compensation Denial
- 60. **LIBC-494** – Statement of Wages
- 64. **LIBC-392** – Statement of Account of Compensation Paid
- 66. **LIBC-750** – Employee Report of Wages and Physical Condition
- 68. **LIBC-756** – Employee's Report of Benefits or Offsets
- 70. **LIBC-760** – Employee Verif. of Employment, Self-Employment or Change in Physical Condition
- 72. **LIBC-762** – Notice of Suspension for Failure to Return Form LIBC-760
- 74. **LIBC-764** – Notice of Change of Workers' Compensation Disability Status
- 76. **LIBC-757** – Notice of Ability to Return to Work
- 77. **LIBC-145** – EDI Quick Reference Guide for Attorneys
- 79. **LIBC-146** – Forms Solution Form to Transaction Guide

A Statement of Wages, Form LIBC-494A or a Statement of Wages, Form LIBC-494C must be filed with every indemnity NCP or TNCP unless wages are estimated.

Compensation is payable as follows:

Check only if compensation for medical treatment (**medical only, no loss of wages**) will be paid subject to the Workers' Compensation Act. Compensation for medical treatment is payable from the date of injury. For compensation for medical treatment only, you should not complete numbers 1 through 4.

1. Weekly compensation rate \$. Based on an average weekly wage of \$.

This box is checked if AWW is estimated. This box is checked if wages paid in lieu of compensation.

2. Payments begin on - - (Compensation for loss of wages is payable for first seven days only; disability extends 14 or more days; compensation for medical treatment is payable from the date of injury.)
MM DD YYYY

Section 308 of the PA Workers' Compensation Act generally provides that compensation shall be paid in periodic installments as the wages of the employee were payable before the injury.

Any termination, suspension, or modification of these payments must be made by agreement, final receipt, administrative or judicial determination, or as otherwise provided in the Workers' Compensation Act or Regulations of the department.

3. Date first check mailed - - This box is checked if date exceeds the 21-day Rule.
MM DD YYYY

4. If the injury involves a loss under Section 306(c) (except for disfigurement of the head, face, or neck) and the employee has returned to work, complete the following information:

(a) Compensation is payable for weeks days of loss or loss of use of _____

(b) Employee returned to work without loss of income on -
MM DD YYYY

(c) Healing period payable for weeks days (up to (b) above and subject to seven-day waiting period.)

(d) Total (a) and (c) payable weeks days

(e) Credit taken for disability benefits paid is .

Claims representative's name _____ Telephone _____

NOTICE TO EMPLOYEE: If any questions arise regarding these payments, contact the claims representative named above.

Any individual filing misleading or incomplete information knowingly and with the intent to defraud is in violation of Section 1102 of the Pennsylvania Workers' Compensation Act, 77 P.S. §1039.2, and may also be subject to criminal and civil penalties under 18 Pa. C.S.A. §4117 (relating to insurance fraud).

Employer Information Services
717.772.3702

Claims Information Services
toll-free inside PA: 800.482.2383
local & outside PA: 717.772.4447

Hearing Impaired
PA Relay 7-1-1

To view your claim file, log on to www.wcais.pa.gov

*Auxiliary aids and services are available upon request to individuals with disabilities.
Equal Opportunity Employer/Program*

AGREEMENT FOR COMPENSATION FOR DISABILITY OR PERMANENT INJURY

EMPLOYEE SOCIAL SECURITY NUMBER OR WC ID NUMBER

- -

DATE OF INJURY

- -
MM DD YYYY

WCAIS CLAIM NUMBER

EMPLOYEE

First name _____
 Last name _____
 Date of birth _____
 Address _____
 Address _____
 City/Town _____ State ____ ZIP _____
 County _____
 Telephone _____

EMPLOYER

Name _____
 Address _____
 Address _____
 City/Town _____ State ____ ZIP _____
 County _____
 Telephone _____ FEIN _____

INSURER or THIRD PARTY ADMINISTRATOR (if self-insured)

Name _____
 Address _____
 Address _____
 City/Town _____ State ____ ZIP _____
 County _____
 Telephone _____ FEIN _____
 Contact _____
 NAIC code _____ or Insurer code _____
 Insurer/TPA claim # _____

INJURY INFORMATION

Part of body injured _____
 Nature of injury _____

 Accident/injury description narrative _____

 Check if occupational disease

NOTICE: Agreement should be clearly completed, (preferably typed) and uploaded in accordance with the provisions of the EDI Implementation Guide. A copy must be sent to the employee. Wage information must be completed in accordance with the Pennsylvania Workers' Compensation Act, and sent to the employee.

DATE DISABILITY BEGAN - -
MM DD YYYY

The employer shall pay the employee compensation at a rate of \$ _____ per week on an average weekly wage of \$ _____ beginning - - .
MM DD YYYY

Date first check mailed _____. If the date exceeds the 21-Day Rule, check this box
 And explain under "further matters agreed upon" on reverse.

Payment of medical and hospital expenses are subject to the limits of time and amount provided by the Pennsylvania Workers' Compensation Act and subject to modification or termination with the Act.

Compensation payable for ____ weeks ____ days for loss or loss of use of _____ under Section 306(c).

Compensation payable for ____ weeks ____ days for healing period for loss or loss of use of _____ under Section 306(c).

Compensation payable for ____ weeks ____ days for disfigurement under Section 306(c). Please describe the disfigurement.

Further matters agreed upon:

We, the undersigned, agree upon the matters represented herein by the above named employee and the above named employer.

Employee's signature _____

Date of agreement
[] [] - [] [] - [] [] [] []
MM DD YYYY

Claims Representative's signature _____

Claims Representative's name (typed/printed) _____

Telephone _____

Any individual filing misleading or incomplete information knowingly and with the intent to defraud is in violation of Section 1102 of the Pennsylvania Workers' Compensation Act, 77 P.S. §1039.2, and may also be subject to criminal and civil penalties under 18 Pa. C.S.A. §4117 (relating to insurance fraud).

Employer Information Services
717.772.3702

Claims Information Services
toll-free inside PA: 800.482.2383
local & outside PA: 717.772.4447

Hearing Impaired
PA Relay 7-1-1

Email
ra-li-bwc-helpline@pa.gov



Auxiliary aids and services are available upon request to individuals with disabilities.
Equal Opportunity Employer/Program

**SUPPLEMENTAL AGREEMENT FOR
COMPENSATION FOR DISABILITY
OR PERMANENT INJURY**

EMPLOYEE SOCIAL SECURITY NUMBER OR WC ID NUMBER
 - -

DATE OF INJURY
 - -
 MM DD YYYY

WCAIS CLAIM NUMBER

EMPLOYEE

First name _____
 Last name _____
 Date of birth _____
 Address _____
 Address _____
 City/Town _____ State ____ ZIP _____
 County _____
 Telephone _____

EMPLOYER

Name _____
 Address _____
 Address _____
 City/Town _____ State ____ ZIP _____
 County _____
 Telephone _____ FEIN _____

INJURY INFORMATION

Part of body injured _____
 Nature of injury _____

 Accident/injury description narrative _____

 Check if occupational disease

INSURER or THIRD PARTY ADMINISTRATOR (if self-insured)

Name _____
 Address _____
 Address _____
 City/Town _____ State ____ ZIP _____
 County _____
 Telephone _____ FEIN _____
 Contact _____
 NAIC code _____ or Insurer code _____
 Insurer/TPA claim # _____

NOTICE: Agreement should be clearly completed, (preferably typed) and uploaded in accordance with the provisions of the EDI Implementation Guide. A copy must be sent to the employee. Weekly wages must be completed in accordance with the Pennsylvania Workers' Compensation Act.

Whereas, the undersigned employer and employee hereby agree that the status of the employee's disability changed on - - as follows:

Suspended, returned to work, no loss of wages Termination
 Modification Recurred
 Specific loss

Said employer shall pay employee compensation at the rate of \$ _____ per week beginning on - -

Compensation is payable for _____ weeks _____ days; or, if the future period of disability is uncertain, then to continue at said-rate until further changed by supplemental agreement, final receipt, or order of a Workers' Compensation Judge, or the Workers' Compensation Appeal Board.

The employee's new partial compensation is based on the employee's present weekly earnings and is calculated as follows:

Calculation: _____ Average weekly wage at time of injury

Minus: _____ Present weekly earnings

_____ Subtotal

x 2/3= _____ New partial compensation rate (subject to the maximum benefit)

Further matters agreed upon (list any previously unreported periods of compensation and/or actions in chronological order, as well as additional information):

We, the undersigned, agree upon the matters represented herein by the above named employee and the above named employer.

Employee's signature

Date of agreement

		-			-				
MM			DD			YYYY			

Claims Representative's signature

Claims Representative's name (typed/printed)

Telephone _____

Any individual filing misleading or incomplete information knowingly and with the intent to defraud is in violation of Section 1102 of the Pennsylvania Workers' Compensation Act, 77 P.S. §1039.2, and may also be subject to criminal and civil penalties under 18 Pa. C.S.A. §4117 (relating to insurance fraud).

Employer Information Services
717.772.3702

Claims Information Services
toll-free inside PA: 800.482.2383
local & outside PA: 717.772.4447

Hearing Impaired
PA Relay 7-1-1

Email
ra-li-bwc-helpline@pa.gov



*Auxiliary aids and services are available upon request to individuals with disabilities.
Equal Opportunity Employer/Program*

NOTICE OF TEMPORARY COMPENSATION PAYABLE

EMPLOYEE

Date of birth - -
MM DD YYYY

County _____

Telephone _____

DATE OF NOTICE
 - -
MM DD YYYY

DATE OF INJURY
 - -
MM DD YYYY

SOCIAL SECURITY NUMBER
 - -

W. ID NUMBER

WCAIS CLAIM NUMBER

EMPLOYER

Name _____
Address _____
Address _____
City/Town _____ State _____ ZIP _____
County _____
Telephone _____ FEIN _____

INSURER

Name _____
Address _____
Address _____
City/Town _____ State _____ ZIP _____
County _____
Telephone _____ FEIN _____
NAIC code _____ Insurer code _____
Insurer/Administrator claim # _____

TPA

Name _____
Address _____
Address _____
City/Town _____ State _____ ZIP _____
County _____
Telephone _____ FEIN _____
Insurer/Administrator claim # _____

INJURY INFORMATION

Part of body injured

Nature of injury

Accident/injury description narrative

County _____

Check if occupational disease

NOTICE TO EMPLOYEE: This notice of temporary compensation payments is for a period of up to 90 days and **is not** an admission by your employer that it is responsible for your injury. If any questions arise, contact the representative on the reverse side of this notice. If you need further information, call the bureau at 800-482-2383.

NOTICE TO EMPLOYER: This notice must be filed with the Bureau of Workers' Compensation via electronic format. In wage loss claims, a copy of the notice is to be sent to the injured employee with the first payment of temporary compensation. In wage loss claims, the 90 day period begins on the first day of disability. The employer's/insurer's failure to file a notice as provided in Section 406.1(d)(5) of the Act advising the employee that the employer is ceasing temporary compensation shall be deemed an admission of liability, and this notice shall be converted to a Notice of Compensation Payable. A separate paper copy of this EDI-generated form should not be uploaded or sent to the Bureau.

Specific information regarding this claim is on the reverse side of this form.

Compensation is payable as follows:

Check only if compensation for medical treatment (**medical only, no loss of wages**) will be paid subject to the Workers' Compensation Act. Compensation for medical treatment is payable from the date of injury. If employer stops temporary compensation in accordance with the Act, employer will not pay for treatment received on or after the stoppage date. For compensation for medical treatment only, you should not complete number 1.

1. Weekly compensation rate \$. Based on an average weekly wage of \$.

This box is checked if AWW is estimated. This box is checked if wages paid in lieu of compensation.

A Statement of Wages, Form LIBC-494A or a Statement of Wages, Form LIBC-494C must be filed with every indemnity MCP or TNCP unless wages are estimated.

Section 308 of the PA Workers' Compensation Act generally provides that compensation shall be paid in period installments as the wages of the employee were payable before the injury.

2. Ninety-day period begins on - - and ends on - -
MM DD YYYY MM DD YYYY

Claims representative's name _____ Telephone _____

NOTICE TO EMPLOYEE: If any questions arise regarding these payments, contact the claims representative named above.

Any intentional filing of misleading or incomplete information knowingly and with the intent to defraud is in violation of Section 1102 of the Pennsylvania Workers' Compensation Act, 77 P.S. §1039.2, and may also be subject to criminal and civil penalties under 18 Pa. C.S.A. §4117 (relating to insurance fraud).

Employer Information Services
717.772.3702

Claims Information Services
toll-free inside PA: 800.482.2383
local & outside PA: 717.772.4447

Hearing Impaired
PA Relay 7-1-1

To view your claim file, log on to www.wcais.pa.gov

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Equal Opportunity Employer/Program*

NOTICE STOPPING TEMPORARY COMPENSATION

EMPLOYEE

Date of birth - -

MM DD YYYY

County _____

Telephone _____

DATE OF NOTICE

- -

MM DD YYYY

DATE OF INJURY

- -

MM DD YYYY

SOCIAL SECURITY NUMBER

- -

W ID NUMBER

WCAIS CLAIM NUMBER

EMPLOYER

Name _____

Address _____

Address _____

City/Town _____ State _____ ZIP _____

County _____

Telephone _____ FEIN _____

INSURER

Name _____

Address _____

Address _____

City/Town _____ State _____ ZIP _____

County _____

Telephone _____ FEIN _____

NAIC code _____ Insurer code _____

Insurer/Administrator claim # _____

NOTICE TO INSURER: This notice must be filed in WCAIS via electronic format no later than five days after the last payment of temporary compensation. A copy must be sent to the employee. A separate paper copy of this EDI-generated form should not be uploaded or sent to the Bureau.

TPA

Name _____

Address _____

Address _____

City/Town _____ State _____ ZIP _____

County _____

Telephone _____ FEIN _____

Insurer/Administrator claim # _____

Specific information regarding this claim is on the reverse side of this form.

NOTICE TO EMPLOYEE: This notice is being sent because payment of compensation, being paid pursuant to the Notice of Temporary Compensation Payable, is being stopped as of

- -
MM DD YYYY

The payment of temporary compensation does not mean that your employer assumed responsibility for your injury. Your employer and you retain all rights, defenses and obligations with regard to the claim. Further, the payment of temporary compensation may not be used to support a claim for benefits in a future proceeding.

WE HAVE DECIDED NOT TO ACCEPT LIABILITY AND ATTACHED IS A *NOTICE OF WORKERS' COMPENSATION DENIAL*. IF YOU BELIEVE YOU SUFFERED A WORK-RELATED INJURY, YOU WILL BE REQUIRED TO FILE A *CLAIM PETITION* WITH THE WORKERS' COMPENSATION OFFICE OF ADJUDICATION IN ORDER TO PROTECT YOUR FUTURE RIGHTS.

You have three years from the date of injury, or discovery of your condition, to file a Claim Petition for benefits. Since time limits can vary depending on the facts of your situation, you may wish to contact an attorney if you believe you may have a claim.

Claims representative name _____ Telephone _____

Any individual filing misleading or incomplete information knowingly and with the intent to defraud is in violation of Section 1102 of the Pennsylvania Workers' Compensation Act, 77 P.S. §1039.2, and may also be subject to criminal and civil penalties under 18 Pa. C.S.A. §4117 (relating to insurance fraud).

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toll-free inside PA: 800.482.2383
local & outside PA: 717.772.4447

Hearing Impaired
PA Relay 7-1-1

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NOTICE OF WORKERS' COMPENSATION DENIAL

EMPLOYEE

Date of birth - -

MM DD YYYY

County _____

Telephone _____

EMPLOYER

Name _____

Address _____

Address _____

City/Town _____ State _____ ZIP _____

County _____

Telephone _____ FEIN _____

INSURER

Name _____

Address _____

Address _____

City/Town _____ State _____ ZIP _____

County _____

Telephone _____ FEIN _____

NAIC code _____ Insurer code _____

Insurer/Administrator claim # _____

TPA

Name _____

Address _____

Address _____

City/Town _____ State _____ ZIP _____

County _____

Telephone _____ FEIN _____

Insurer/Administrator claim # _____

DATE OF NOTICE
 - -

MM DD YYYY

DATE OF INJURY
 - -

MM DD YYYY

SOCIAL SECURITY NUMBER
 - -

W ID NUMBER

WCAIS CLAIM NUMBER

ALLEGED INJURY INFORMATION

Part of body injured

Nature of injury

Accident/injury description narrative

County _____

Check if occupational disease

NOTICE TO EMPLOYEE: The employer/insurer has decided to deny you workers' compensation benefits. You have the right to contest this denial by timely filing a petition. Petitions may be either electronically filed in WCAIS or sent to the Workers' Compensation Office of Adjudication, 1010 N. Seventh St., Suite 202, Harrisburg, PA 17102-1400.

Do not use this form to accept a medical-only claim. This notice shall be sent to the employee or dependent and filed with the Bureau of Workers' Compensation via electronic format no later than 21 days after notice or knowledge to the employer of the employee's disability or death. A separate paper copy of this EDI-generated form should not be uploaded or sent to the Bureau.

Specific information regarding this claim is on the reverse side of this form.

Date the employer received notice or knew of alleged injury or date of employee's claimed disability: This date must be completed.

		-			-				
MM			DD			YYYY			

The employer/insurer declines to pay workers' compensation benefits to claimant because:

- 1. The employee did not suffer a work-related injury. The definition of injury also includes aggravation of a pre-existing condition or disease contracted as a result of employment.
- 2. The injury was not within the scope of employment.
- 3. The employee was not employed by the defendant.
- 4. The employee did not give notice of his/her injury or disease to the employer within 120 days within the meaning of Sections 311-313 of the Workers' Compensation Act.
- 5. Other good cause; please explain fully in the space below.

Claims representative's name _____ Telephone _____

EMPLOYEES' RIGHTS TO CONTEST DENIAL

You have the right to contest this denial of your claim for workers' compensation benefits. Your petition will be heard by a workers' compensation judge. You and your employer will have the opportunity to testify and provide medical evidence with respect to your claim. Both you and your employer will have the right to bring witnesses. You may retain an attorney to represent you in this proceeding although representation by an attorney is not required by law. Because of the legal complications that can arise in occupational disease and workers' compensation cases, you may want to consider legal advice. **If you do not know how to contact an attorney, please contact your local Bar Association or the Pennsylvania Bar Association at 800-692-7375 for guidance in obtaining an attorney.**

The procedure for filing a petition is as follows:

- 1. To file a petition you may access WCAIS from www.wcais.pa.gov, or upon request a petition, Form LIBC-362, will be mailed to you. You or your attorney may file your petition online, complete and return the original petition to the Workers' Compensation Office of Adjudication by electronically attaching the document to a claim in WCAIS or by mail to the the Workers' Compensation Office of Adjudication, 1010 N. Seventh St., Suite 202, Harrisburg, PA 17102-1400.
- 2. A petition for an injury must be filed within three years of the date of injury. Filings for occupational disease claims, disability, or death must occur within 300 weeks from last exposure. A petition must be filed no later than three years from that date. Failure to file a petition within these rules may result in a loss of your claim.
- 3. You must give notice of your work-related injury or disease to your employer within 120 days of the date you knew (or should have known) that you were injured or had contracted a work-related disease.
- 4. When your petition is filed with the Workers' Compensation Office of Adjudication, it will be assigned to a judge for a hearing. You will be notified of your hearing date. All parties are requested to be fully prepared prior to the first hearing.

If you need petition forms or have questions, please go to www.wcais.pa.gov or contact one of the Information Services numbers listed below.

Any intentional filing, misleading or incomplete information knowingly and with the intent to defraud is in violation of Section 1102 of the Pennsylvania Workers' Compensation Act, 77 P.S. §1039.2, and may also be subject to criminal and civil penalties under 18 Pa. C.S.A. §4117 (relating to insurance fraud).

Employer Information Services
717.772.3702

Claims Information Services
toll-free inside PA: 800.482.2383
local & outside PA: 717.772.4447

Hearing Impaired
PA Relay 7-1-1

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Equal Opportunity Employer/Program*

Computation: Compute the appropriate items below for the employee. The highest result of the computations is used to determine the average weekly wage to establish the basis for workers' compensation payments.

1. If wages fixed by:
 - (a) Week \$ _____
 - (b) Month \$ _____ X 12 ÷ 52 = \$ _____
 - (c) Year \$ _____ ÷ 52 = \$ _____
2. If wages fixed by day, hour, or output, including overtime and bonus, then complete the following for each of the four 13-week periods prior to the date of injury:

	FROM	THROUGH	WAGES	BOARDING* LODGING*	GRATUITIES**	TOTAL	DAYS WORKED
1st Period	_____	_____	\$ _____	\$ _____	\$ _____	\$ _____	_____
2nd Period	_____	_____	\$ _____	\$ _____	\$ _____	\$ _____	_____
3rd Period	_____	_____	\$ _____	\$ _____	\$ _____	\$ _____	_____
4th Period	_____	_____	\$ _____	\$ _____	\$ _____	\$ _____	_____

*Include at actual value of board and/or lodging

**Include if employee receives at least one-third of wages in tips or gratuities

- (a) Using the highest 13-week period from above:
\$ _____ divided by 13-weeks = \$ _____
- (b) Last two completed by 13-week periods
\$ _____ total wages divided by _____ total days employee worked multiplied by 5 = \$ _____
3. If employed less than one 13-week period:
\$ _____ total wages divided by _____ total days employee worked times _____ total days worked by other employees in a similar occupation for the quarter immediately preceding the injury divided by 13 = \$ _____
4. If occupation is exclusively seasonal:
\$ _____ total wages from all occupations during 12 calendar months preceding injury divided by 50 = \$ _____

For the following two methods, use calendar quarters (i.e. January through March, April through June, July through September, October through December):

5. \$ _____ total wages earned with the same employer during the two complete calendar quarters divided by the _____ number of days worked for the employer during that period multiplied by 5 = \$ _____
6. \$ _____ wages under Section 309(f) are computed using the calendar quarters as defined above. The highest calendar quarter wages received in the first four of the last five completed calendar quarters immediately preceding the date of injury is \$ _____ divided by 13 = \$ _____
7. BASED ON ABOVE INFORMATION, THE HIGHEST AVERAGE WEEKLY WAGE FOR INJURED EMPLOYEE IS = \$ _____
COMPENSATION PAYABLE: \$ _____ PER WEEK

Employer/Defendant Representative's signature

Employer/Defendant Representative's name (typed/printed)

Telephone

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**STATEMENT OF WAGES
(FOR INJURIES OCCURRING
ON OR AFTER JUNE 24, 1996)**

EMPLOYEE SOCIAL SECURITY NUMBER OR WC ID NUMBER
 - -

DATE OF INJURY
 - -
MM DD YYYY

WCAIS CLAIM NUMBER

EMPLOYEE

First name _____
 Last name _____
 Date of birth _____
 Address _____
 Address _____
 City/Town _____ State ____ ZIP _____
 County _____ Telephone _____

EMPLOYER

Name _____
 Address _____
 Address _____
 City/Town _____ State ____ ZIP _____
 County _____
 Telephone _____ FEIN _____

INSURER or THIRD PARTY ADMINISTRATOR (if self-insured)

Name _____
 Address _____
 Address _____
 City/Town _____ State ____ ZIP _____
 County _____
 Telephone _____ FEIN _____
 Contact _____
 NAIC code _____ or Insurer code _____
 Insurer/TPA claim # _____

CONCURRENT EMPLOYMENT ONLY

Check if Primary employer OR
 Concurrent employer

INSTRUCTIONS

The Statement of Wages must be clearly completed in accordance with the Pennsylvania Workers' Compensation Act and uploaded in accordance with the provisions of the EDI Implementation guide when submitting certain EDI transactions. A copy must be sent to the injured employee.

The "average weekly wage" is used to determine the amount of weekly compensation wage-loss benefits payable under the Pennsylvania Workers' Compensation Act. A chart is available from the Bureau of Workers' Compensation to aid in determining the weekly compensation rate, online at www.dli.state.pa.us

CONCURRENT EMPLOYMENT

If the employee had more than one employer at the time of injury, a separate Statement of Wages form must be completed for each employer. Submit these forms together. Using #8 on the Primary Employer's form **only** (employer with whom the injury occurred): show the addition of the average weekly wages from all employers, show the combined average weekly wage to the right of the equal sign and show the appropriate workers' compensation rate. Check the Primary employer box for the Primary employer and the Concurrent employer box for all other employers.

**FINAL STATEMENT OF ACCOUNT
OF COMPENSATION PAID**

EMPLOYEE SOCIAL SECURITY NUMBER OR WC ID NUMBER

- -

DATE OF INJURY

- -
 MM DD YYYY

WCAIS CLAIM NUMBER

EMPLOYEE

First name _____
 Last name _____
 Date of birth _____
 Address _____
 Address _____
 City/Town _____ State ____ ZIP _____
 County _____
 Telephone _____

EMPLOYER

Name _____
 Address _____
 Address _____
 City/Town _____ State ____ ZIP _____
 County _____
 Telephone _____ FEIN _____

INSURER or THIRD PARTY ADMINISTRATOR (if self-insured)

Name _____
 Address _____
 Address _____
 City/Town _____ State ____ ZIP _____
 County _____
 Telephone _____ FEIN _____
 Contact _____
 NAIC code _____ or Insurer code _____
 Insurer/TPA claim # _____

NOTICE: A Final Statement of Account shall be filed after the final payment of compensation.

This is to certify that the above named employer or insurer has paid compensation under the Pennsylvania Workers' Compensation Act in the above case as follows:

Rate	From Date	To Date	#Wks	#Days	Total
\$ _____	<input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> MM DD YYYY MM DD YYYY	<input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> MM DD YYYY MM DD YYYY	_____	_____	\$ _____
\$ _____	<input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> MM DD YYYY MM DD YYYY	<input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> MM DD YYYY MM DD YYYY	_____	_____	_____
\$ _____	<input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> MM DD YYYY MM DD YYYY	<input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> MM DD YYYY MM DD YYYY	_____	_____	_____

*Additional payment periods or remarks should be indicated on the reverse side of this form.

Medical Payments \$ _____
 Indemnity Payments \$ _____
 Other Payments \$ _____
TOTAL COMPENSATION PAID \$ _____

Remarks/Additional Information:

Employer/Insurer Representative signature

Employer/Insurer Representative (typed/printed)

Date

	-		-				
MM		DD		YYYY			

Any individual filing misleading or incomplete information knowingly and with the intent to defraud is in violation of Section 1102 of the Pennsylvania Workers' Compensation Act, 77 P.S. §1039.2, and may also be subject to criminal and civil penalties under 18 Pa. C.S.A. §4117 (relating to insurance fraud).

Employer Information Services
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Claims Information Services
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Hearing Impaired
PA Relay 7-1-1

Email
ra-li-bwc-helpline@pa.gov



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Equal Opportunity Employer/Program*

**EMPLOYEE REPORT OF WAGES
AND PHYSICAL CONDITION**

EMPLOYEE SOCIAL SECURITY NUMBER OR WC ID NUMBER
 - -

DATE OF INJURY
 - -
 MM DD YYYY

WCAIS CLAIM NUMBER

EMPLOYEE

First name _____
 Last name _____
 Date of birth _____
 Address _____
 Address _____
 City/Town _____ State ____ ZIP _____
 County _____
 Telephone _____

EMPLOYER

Name _____
 Address _____
 Address _____
 City/Town _____ State ____ ZIP _____
 County _____
 Telephone _____ FEIN _____

INSURER or THIRD PARTY ADMINISTRATOR (if self-insured)

Name _____
 Address _____
 Address _____
 City/Town _____ State ____ ZIP _____
 County _____
 Telephone _____ FEIN _____
 NAIC code _____ or Insurer code _____
 Insurer/TPA claim # _____

**FAILURE TO COMPLETE THIS FORM MAY SUBJECT YOU TO
ARTICLE XI OF THE WC ACT RELATING TO FRAUD.**

**YOU MUST COMPLETE AND RETURN THIS FORM
WITHIN 30 DAYS OF BEGINNING EMPLOYMENT OR
SELF-EMPLOYMENT**

1. Are you now employed? Yes No
2. Are you now self-employed? Yes No
3. Have you been employed or self-employed at any time while receiving workers' compensation benefits? Yes No
 If you answered yes to one of the questions, please complete the following:
 Occupation(s): _____
4. Has your physical condition (caused by your work injury) changed? Yes No
 If yes, attach medical report.
5. Is there any other information you are aware of that is relevant in determining your entitlement to, or amount of compensation?
 Yes No
 If yes, please explain: _____

(OVER)

6. Names of employers for whom you have worked since your date of injury:

Name _____
 Address _____
 Address _____
 City/Town _____ State ____ ZIP _____

Period of employment:
 From - -
 MM DD YYYY

To - -
 MM DD YYYY

Amount of wages \$ _____ . ____

Name _____
 Address _____
 Address _____
 City/Town _____ State ____ ZIP _____

Period of employment:
 From - -
 MM DD YYYY

To - -
 MM DD YYYY

Amount of wages \$ _____ . ____

Name _____
 Address _____
 Address _____
 City/Town _____ State ____ ZIP _____

Period of employment:
 From - -
 MM DD YYYY

To - -
 MM DD YYYY

Amount of wages \$ _____ . ____

IF SELF-EMPLOYED

From - -
 MM DD YYYY

To - -
 MM DD YYYY

Amount of wages \$ _____ . ____

I verify that this information is true and correct based upon my knowledge, information and belief. I understand false statements are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Employee

First name _____
 Last name _____
 Signature _____

DATE OF NOTICE
 - -
 MM DD YYYY

Section 311.1(A) of the Workers' Compensation Act requires employees who are receiving workers' compensation, or who have filled a petition to receive workers' compensation, to report earnings from employment or self-employment. You must complete and return this form to the sender within thirty (30) days of beginning such employment or self-employment.

EMPLOYEE IS TO RETURN THIS COMPLETED FORM TO THE INSURER OR THIRD PARTY ADMINISTRATOR SHOWN ON THE FRONT.

Any individual filing misleading or incomplete information knowingly and with the intent to defraud is in violation of Section 1102 of the Pennsylvania Workers' Compensation Act, 77 P.S. §1039.2, and may also be subject to criminal and civil penalties under 18 Pa. C.S.A. §4117 (relating to insurance fraud).

Employer Information Services
 717.772.3702

Claims Information Services
 toll-free inside PA: 800.482.2383
 local & outside PA: 717.772.4447

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Email
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Did you "roll over" pension benefits into an IRA Account? Yes No Amount "rolled over" \$ _____ . ____
(IRA benefits are not offset until you begin withdrawing them from your account.)

I verify that this information is true and correct, based upon my knowledge, information and belief. I understand false statements are subject to the penalties of 18 Pa. C.S. §4909, relating to unsworn falsification to authorities.

Employee signature

DATE
MM - DD - YYYY

If you are receiving any wages from employment or self-employment, check this box . You must report this to your insurer or self-insured employer. Contact your insurer/employer for that reporting form (LIBC-760).

INSTRUCTIONS

TO EMPLOYEES:

If you are receiving workers' compensation wage-loss benefits due to an injury which occurred on or after June 24, 1996, you must report the receipt of the following:

- Unemployment compensation benefits
- Social Security (old age) benefits
- Severance benefits paid by the employer directly liable for your workers' compensation
- Pension benefits to the extent funded by the employer directly liable for your workers' compensation

Your workers' compensation benefits may be adjusted if you are receiving any of the above benefits. You are required to acknowledge both the receipt of and changes to any of the benefits listed above through the immediate completion and submission of this form.

FAILURE TO REPORT THE RECEIPT OF OR CHANGES TO ANY OF THE BENEFITS LISTED ABOVE MAY SUBJECT YOU TO PROSECUTION UNDER ARTICLE XI OF THE WORKERS' COMPENSATION ACT RELATING TO INSURANCE FRAUD.

Any individual filing misleading or incomplete information knowingly and with the intent to defraud is in violation of Section 1102 of the Pennsylvania Workers' Compensation Act, 77 P.S. §1039.2, and may also be subject to criminal and civil penalties under 18 Pa. C.S.A. §4117 (relating to insurance fraud).

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Equal Opportunity Employer/Program*

**EMPLOYEE VERIFICATION OF
EMPLOYMENT, SELF-EMPLOYMENT
OR CHANGE IN
PHYSICAL CONDITION**

EMPLOYEE SOCIAL SECURITY NUMBER OR WC ID NUMBER
 - -

DATE OF INJURY
 - -
MM DD YYYY

WCAIS CLAIM NUMBER

EMPLOYEE

First name _____
Last name _____
Date of birth _____
Address _____
Address _____
City/Town _____ State ___ ZIP _____
County _____
Telephone _____

EMPLOYER

Name _____
Address _____
Address _____
City/Town _____ State ___ ZIP _____
County _____
Telephone _____ FEIN _____

INSURER or THIRD PARTY ADMINISTRATOR (if self-insured)

Name _____
Address _____
Address _____
City/Town _____ State ___ ZIP _____
County _____
Telephone _____ FEIN _____
NAIC code _____ or Insurer code _____
Insurer/TPA claim # _____

INSTRUCTIONS TO EMPLOYEE:

DO NOT RETURN THIS FORM TO THE BUREAU OF WORKERS' COMPENSATION.

COMPLETED FORM MUST BE RETURNED TO THE PARTY WHO SENT THE FORM TO YOU WITHIN 30 DAYS OF YOUR RECEIPT OF THIS FORM.

IF YOU DO NOT COMPLETE AND RETURN THIS FORM TO THE PARTY WHO SENT IT TO YOU WITHIN 30 DAYS IT MAY RESULT IN A SUSPENSION OF YOUR COMPENSATION BENEFITS AS PROVIDED BY SECTION 311.1(g) OF THE WC ACT, AS WELL AS PROSECUTION FOR FRAUD UNDER ARTICLE XI OF THE WC ACT.

YOU MAY BE REQUIRED TO COMPLETE AND RETURN THIS FORM EVERY SIX MONTHS.

INSTRUCTIONS TO EMPLOYEE: Section 311.1(d) of the Workers' Compensation Act requires employees who are receiving workers' compensation, or have filed a petition to receive workers' compensation, to verify employment, self-employment, wages and changes to physical condition.

1. Are you currently employed by any employer other than the employer listed above? Yes No
2. Are you currently self-employed? Yes No
3. Have you been employed or self-employed at any time while receiving workers' compensation benefits? Yes No
4. Has your physical condition (caused by your injury) changed? Yes No
5. Is there other information you are aware of that is relevant in determining your entitlement to, or amount of compensation?
 Yes No

(OVER)

6. Names of employers for whom you have worked since your date of injury:

Name _____
 Address _____
 Address _____
 City/Town _____ State ____ ZIP _____

Period of employment:
 From - -
 MM DD YYYY

To - -
 MM DD YYYY

Amount of wages \$ _____ . ____

Name _____
 Address _____
 Address _____
 City/Town _____ State ____ ZIP _____

Period of employment:
 From - -
 MM DD YYYY

To - -
 MM DD YYYY

Amount of wages \$ _____ . ____

Name _____
 Address _____
 Address _____
 City/Town _____ State ____ ZIP _____

Period of employment:
 From - -
 MM DD YYYY

To - -
 MM DD YYYY

Amount of wages \$ _____ . ____

IF SELF-EMPLOYED

From - -
 MM DD YYYY

To - -
 MM DD YYYY

Amount of wages \$ _____ . ____

I verify that this information is true and correct based upon my knowledge, information and belief. I understand false statements are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Employee

First name _____
 Last name _____
 Signature _____

DATE OF NOTICE
 - -
 MM DD YYYY

Any individual filing misleading or incomplete information knowingly and with the intent to defraud is in violation of Section 1102 of the Pennsylvania Workers' Compensation Act, 77 P.S. §1039.2, and may also be subject to criminal and civil penalties under 18 Pa. C.S.A. §4117 (relating to insurance fraud).

Employer Information Services
 717.772.3702

Claims Information Services
 toll-free inside PA: 800.482.2383
 local & outside PA: 717.772.4447

Hearing Impaired
 PA Relay 7-1-1

Email
 ra-li-bwc-helpline@pa.gov



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 Equal Opportunity Employer/Program*

**NOTICE OF SUSPENSION FOR
FAILURE TO RETURN
FORM LIBC-760**

(EMPLOYEE VERIFICATION OF EMPLOYMENT, SELF-EMPLOYMENT OR CHANGE IN PHYSICAL CONDITION)

EMPLOYEE SOCIAL SECURITY NUMBER OR WC ID NUMBER

- -

DATE OF INJURY

- -
 MM DD YYYY

WCAIS CLAIM NUMBER

EMPLOYEE

First name _____
 Last name _____
 Date of birth _____
 Address _____
 Address _____
 City/Town _____ State ____ ZIP _____
 County _____
 Telephone _____

EMPLOYER

Name _____
 Address _____
 Address _____
 City/Town _____ State ____ ZIP _____
 County _____
 Telephone _____ FEIN _____

INSURER or THIRD PARTY ADMINISTRATOR (if self-insured)

Name _____
 Address _____
 Address _____
 City/Town _____ State ____ ZIP _____
 County _____
 Telephone _____ FEIN _____
 NAIC code _____ or Insurer code _____
 Insurer/TPA claim # _____

DATE OF THIS NOTICE:

- -
 MM DD YYYY

ATTORNEY FOR EMPLOYEE (if known)

Name _____
 Firm name _____
 Address _____
 Address _____
 City/Town _____ State ____ ZIP _____
 Telephone _____ PA Attorney ID number _____

ATTORNEY FOR INSURER/EMPLOYER (if known)

Name _____
 Firm name _____
 Address _____
 Address _____
 City/Town _____ State ____ ZIP _____
 Telephone _____ PA Attorney ID number _____

Name _____
 Signature _____
 Address _____
 Address _____
 City/Town _____ State ____ ZIP _____
 Telephone _____ FEIN _____

A COPY OF THIS FORM AND ATTACHMENTS ARE TO BE PROVIDED TO THE EMPLOYEE AND THE EMPLOYEE'S ATTORNEY (IF KNOWN).

You are hereby notified that your workers' compensation benefits have been suspended as of - - due to your failure to return the *Employee Verification of Employment, Self-Employment or Change in Physical Condition* form (LIBC-760) which was mailed to you on - - . This form was due for return to the sender within 30 calendar days of its receipt. Your failure to return the completed form within this time period entitles your insurer/employer to suspend your workers' compensation benefits under Section 311.1(g) of the Pennsylvania Workers' Compensation Act.

Your workers' compensation benefits will immediately begin again upon your insurer/employer's receipt of the verification form, but you will not receive reinstated benefits for the period of this suspension. In addition, failure to comply with the provisions of Section 311.1(d) may subject you to prosecution under the provisions of Article XI of the Pennsylvania Workers' Compensation Act relating to fraud.

If you did return the completed LIBC-760 within the prescribed time period, contact the forms sender (insurer/employer) immediately to clarify this matter.

Attached is another copy of the Employee Verification form to assure that you have the opportunity to complete and return it promptly to stop this suspension action.

You may challenge the suspension on legal grounds by filing a *Petition for Reinstatement* with the Pennsylvania Bureau of Workers' Compensation at the address listed on the front. Petitions can be obtained by calling the Bureau at 1-800-482-2383.

Any individual filing misleading or incomplete information knowingly and with the intent to defraud is in violation of Section 1102 of the Pennsylvania Workers' Compensation Act, 77 P.S. §1039.2, and may also be subject to criminal and civil penalties under 18 Pa. C.S.A. §4117 (relating to insurance fraud).

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717.772.3702

Claims Information Services
toll-free inside PA: 800.482.2383
local & outside PA: 717.772.4447

Hearing Impaired
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Email
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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
BUREAU OF WORKERS' COMPENSATION
1171 S. CAMERON STREET, ROOM 103
HARRISBURG, PA. 17104-2501
(TOLL FREE) 800-482-2383

NOTICE OF CHANGE OF WORKERS' COMPENSATION DISABILITY STATUS

Social Security Number: _____

Date of Injury: _____
MM nn yyyy

PA BWC Claim Number: _____
(IF KNOWN)

Employee

First Name	Last Name
Street 1	
Street 2	
City/Town	State Zip Code
County	Telephone

Employer

Name		
Street 1		
Street 2		
City/Town	State	Zip Code
County		
Telephone		FEIN



764 1297-1

DATE OF THIS NOTICE: _____
MM DD YYYY

Insurer or Third Party Administrator (if self-insured)

Name		
Street 1		
Street 2		
City/Town	State	Zip Code
Telephone		Bureau Code
County		
Claim Number		FEIN

Attorney for Employee (if known)

Name		
Firm Name		
Street 1		
Street 2		
City/Town	State	Zip Code
Telephone		PA Attorney ID Number

Attorney for Insurer/Employer (if known)

Name		
Firm Name		
Street 1		
Street 2		
City/Town	State	Zip Code
Telephone		PA Attorney ID Number

SEE IMPORTANT INFORMATION ON REVERSE.

Claim Representative

First Name	Last Name
Telephone	

This notice should be clearly completed (preferably typed) and original mailed to the Bureau at the address in the upper left corner. A copy must be sent to the employee and the employee's counsel (if known).

(OVER)

As a result of an impairment rating evaluation (examination), your disability status has changed.

A change in disability status does not affect the amount of money you receive in your workers' compensation check. Partial disability status does, however, have a maximum period of 500 weeks of benefits.

The specifics of this change are listed as follows:

Claimant Name: _____

Social Security Number: _____

Date of Injury: _____
MM DD YYYY

Date you reached a total of 104 weeks of total disability: _____
MM DD YYYY

Date initially established for the examination: _____
MM DD YYYY

Actual Date of the Rating Examination: _____
MM DD YYYY

Impairment Examining Physician: _____

Impairment Rating Percentage: _____ %

This rating evaluation was conducted in accordance with Section 306(a.2) of the Pennsylvania Workers' Compensation Act.

- The above referenced Impairment Rating percentage has been used by your Insurance Carrier/Employer to change your workers' compensation status from total disability to partial disability status.

The effective date of this status change is _____ . (This effective date will be recorded on your claim record 60 days following the date of this notice)

— OR —

- The result of this rating evaluation is that no change is occurring in your disability status.

You may appeal an adjustment in your workers' compensation status to a Workers' Compensation Judge *Petition for Review* by filing a with the Bureau of Workers' Compensation, 1171 S. Cameron Street, Room 103, Harrisburg, PA 17104-2501, which must include a qualified impairment rating physician's determination of impairment which is equal to or greater than 50%. If you have a question regarding this notice, please call or write the representative below.

Insurer/Employer Representative

First Name	Last Name	
Signature		
Street 1		
Street 2		
City/Town	State	Zip Code
Telephone	Bureau Code	

Any individual filing misleading or incomplete information knowingly and with intent to defraud is in violation of Section 1102 of the Pennsylvania Workers' Compensation Act and may also be subject to criminal and civil penalties through Pennsylvania Act 165 of 1994.

NOTICE OF ABILITY TO RETURN TO WORK

EMPLOYEE SOCIAL SECURITY NUMBER OR WC ID NUMBER

- -

DATE OF INJURY

- -
MM DD YYYY

WCAIS CLAIM NUMBER

EMPLOYEE

First name _____
 Last name _____
 Date of birth _____
 Address _____
 Address _____
 City/Town _____ State ____ ZIP _____
 County _____
 Telephone _____

EMPLOYER

Name _____
 Address _____
 Address _____
 City/Town _____ State ____ ZIP _____
 County _____
 Telephone _____ FEIN _____

INSURER or THIRD PARTY ADMINISTRATOR (if self-insured)

Name _____
 Address _____
 Address _____
 City/Town _____ State ____ ZIP _____
 County _____
 Telephone _____ FEIN _____
 NAIC code _____ or Insurer code _____
 Insurer/TPA claim # _____

DATE OF NOTICE

- -
MM DD YYYY

Section 306(b)(3) of the Pennsylvania Workers' Compensation Act requires insurers to notify the employee when they receive medical evidence indicating the ability to return to work in some capacity.

Receipt of medical evidence indicates your present physical condition or change of condition is:

Attached are all documents supporting these allegations.

YOU SHOULD ALSO KNOW

You have an obligation to look for available employment.
 Proof of available employment may jeopardize your right to receive ongoing benefits.
 You have the right to consult with an attorney in order to obtain evidence to challenge the insurer's contributions.

Any individual filing misleading or incomplete information knowingly and with the intent to defraud is in violation of Section 1102 of the Pennsylvania Workers' Compensation Act, 77 P.S. §1039.2, and may also be subject to criminal and civil penalties under 18 Pa. C.S.A. §4117 (relating to insurance fraud).

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Claims Information Services
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What are the basic EDI Transactions* with which all attorneys should be familiar?

Transaction	What is its use?
FROI 00	Initial report of alleged injury. This transaction establishes a claim in WCAIS.
FROI 02 or SROI 02	Updates claim data (changes, revisions, corrections).
FROI 04 or SROI 04	Denies a claim. This transaction matches an NCD.
SROI IP, EP, AP	First indemnity payment reported. This transaction either matches an Agreement or generates an indemnity NCP or NTCP depending on the coding.
SROI RE	Reports a return to work at less than the pre-injury wages. This transaction matches Supplemental Agreement or generates NTCP.
SROI PY	Reports a payment. When medical payment is reported, this transaction generates a medical only NCP or NTCP depending on the coding and may also be used with a Settlement code to report a one-lump payment, such as C&R.
SROI PD	Denies indemnity reported under a temporary and accepts medical.
SROI S(x)	Suspends indemnity. (x = see list of Suspension Reasons on table referenced in subtext below.)
SROI FN	Closes a claim when no further benefits are expected.
SROI RB, ER	Reopens indemnity on a claim that was previously suspended or closed.

*Additional transactions and more detail on the above transactions can be found on the PA Event table at the Bureau's EDI website, www.dli.pa.gov/edi.

What are the most important codes in EDI?

1. Agreement to Compensate code is the code that the claims adjuster uses to choose either an NCP/Agreement ("L" - liability) or a NTCP ("W" - without liability).
2. Claim Type Code is used by the claims adjuster to indicate whether the claim is medical only or indemnity ("M" - Med Only; "I" - Indemnity; "B" - Became Medical Only).
3. Award/Order Date field is used by the claims adjuster when either a judge has issued a decision or when there is an agreement countersigned by the claimant. When this field is not populated, the claims adjuster may generate an NCP or NTCP; however, no Forms Solution forms can be generated if AOD is present.

What is Forms Solution?

Forms Solution is the process by which a claims adjuster may generate and file any of the most often-filed bureau forms (NCP, NCD, NTCP, and Stopping Notice) by submitting the appropriate EDI transaction and coding. This process enables claims adjusters to simultaneously file EDI and generate a form to meet their requirements under the Act and the filing regulations. While Forms Solution completes the bureau filing, the claims adjuster is still responsible for providing a copy to the injured worker.

EDI transactions are the mandated way to submit these four forms to the bureau. No paper versions of these forms are being accepted. All other bureau forms must continue to be populated by filer independent of the associated required EDI entry and must continue to be uploaded to WCAIS or mailed to the bureau via U.S. mail with a copy to the injured worker.

This new process lowers paper and mailing costs, saves on duplication of effort in requiring they both prepare and send both the EDI entry and an LIBC form into the bureau and also file the companion EDI transaction, and encourages more accurate and timely filings.

Facts about Forms Solution

- Neither the bureau nor WCAIS creates or files forms on behalf of carriers and employers. The filing representative determines the forms to be filed on carrier's/employer's behalf and directs the creation and filing of same straight from their EDI reporting.
- The accepted EDI transaction generates the official form of record. Rejected transactions do not generate forms.
- Forms Solution offers four batch processes per day so that users may assure the most accurate filings within established time frames such as 90 days of temporary period, 21 days for first notice, and the 14-day resubmission rule for rejected transactions. Filing companies should discuss increasing their current batch process to avail to their filers the most options for filing flexibility.
- Attorneys and all parties to a claim may view and print claim forms from the Actions Tab in WCAIS.
- While the IAIABC standard is limited with regard to specific body parts to be claimed on forms, claims adjusters wishing to include specific data on the body parts affected or the mechanism of injury may use the ample 500-character Accident/Injury Narrative field along with the Body Part and Nature of Injury codes from the national standard of injury codes so that they may assure that the injury block on the bureau form contains the most complete and accurate information about the injury.

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The below form will be generated...	When this transaction is submitted...	With these fields...
<p>Notice of Temporary Compensation Payable (NTCP) - LIBC 501</p> <p><i>Date Disability Began begins the 90-day period for Indemnity claims</i></p> <p><i>Date of Injury begins the 90-day period for Med Only claims</i></p>	Initial/Acquired Payment/Employer Paid - IP/EP/AP	Agreement to Compensate code = 'W' and Award Order Date is blank, Lump Sum Settlement code is blank.
	Payment - PY	
	Partial Denial - PD	Agreement to Compensate code = 'W', Claim Type code= "M" or "B", Award Order Date is blank, Lump Sum Settlement code is blank, and no previous medical only was accepted.
<p>Amended Notice of Temporary Compensation Payable (NTCP) - LIBC 501</p>	Change in Benefit Amounts - CA	Agreement to Compensate code = 'W' and Award Order Date, Lump Sum Settlement code is blank and claim status is Temporary.
	Change - 02	
	Reinstatement of Benefits/Employer Reinstatement - RB/ER	Agreement to Compensate code = 'W', and claim was previously Temporary and then Comp Denied.
<p>Notice of Compensation Payable (NCP) - LIBC-495</p>	Initial/Acquired Payment/Employer Paid - IP/EP/AP	Agreement to Compensate code = 'L' and Award Order Date is blank, Lump Sum Settlement Code is blank.
	Payment - PY	
	Change - 02	Agreement to Compensate code = 'L' and Award Order Date is blank, Lump Sum Settlement Code is blank.
	Partial Denial - PD	Agreement to Compensate code = 'L', Claim Type code= "M" or "B", Award Order Date is blank, Lump Sum Settlement code is blank, and no previous medical only was accepted.
<p>Amended Notice of Compensation Payable (NCP) - LIBC-495</p>	Change - 02	Agreement to Compensate code = 'L' and Award Order Date is blank, Lump Sum Settlement code is blank and claim status is Compensable.
	Change in Benefit Amounts - CA	
	Reinstatement of Benefits/Employer Reinstatement - RB/ER	Agreement to Compensate code = 'L', and claim was previously Temporary and then Comp Denied.

The below form will be generated...	When this transaction is submitted...	With these fields...
Notice of Compensation Denial (NCD) - LIBC-496	Full Denial - 04 (FROI 04 or SROI 04)	Full Denial Reason code
	Change- 02	Claim status is Comp Denied.
	Partial Denial - PD	In cases where a medical only NCP had been the controlling document but was followed by a full TNCP (for wages), a SROI PD will generate an NCD and Notice Stopping.
Notice Stopping Temporary Compensation Payable - LIBC-502	Full Denial - 04 (SROI)	Notice Stopping will only generate if claim was previously Temporary and SROI 04 (full denial) is filed prior to the expiration of the temporary period.
	Partial Denial - PD	In cases where a medical only NCP had been the controlling document but was followed by a full TNCP (for wages), a SROI PD will generate an NCD and Notice Stopping if filed prior to the expiration of the temporary period.

Please note: When a SROI PD is used while claim is in Temporary status, a medical only NCP will generate if the claim is marked 'M'- Medical and if the 'W'- without liability is updated to 'L'- with liability and no Notice Stopping will generate as the Stopping Notice is not necessary to controvert from temporary filing to medical only acceptance (§121.17 d.)

Statement of Wages (SOW) – LIBC-494C MUST be uploaded to claim in WCAIS whenever a transaction is submitted that generates an indemnity NTCP/NCP; except when wages are estimated or when wages are being paid in lieu of compensation.

PLEASE NOTE: No forms will be generated when the **Award Order Date OR Lump Sum Settlement code** field is populated as this would indicate that an agreement was reached and either one of the following forms will be submitted to BWC or a judge's decision has been rendered*:

1) AGREEMENT FOR COMPENSATION FOR DISABILITY PERMANENT INJURY - LIBC-336

2) SUPPLEMENTAL AGREEMENT FOR COMPENSATION FOR DISABILITY OR PERMANENT INJURY - LIBC-337

3) AGREEMENT FOR COMPENSATION FOR DEATH - LIBC-338

4) SUPPLEMENTAL AGREEMENT FOR COMPENSATION FOR DEATH - LIBC-339

*If an indemnity agreement is being submitted, a SOW must be submitted; except when wages are estimated or when wages are being paid in lieu of compensation.

A guide to transactions equal to forms outside of the four Forms Solution forms above may be located in the Claim Status Reference Sheet found at www.dli.pa.gov/edi

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