

Indiana Workers' Compensation Newsletter

Inside this issue:

Indiana Legislature Has Modified Workers' Compensation Benefits 1

Statute of Limitations to Reopen a Claim 1

Burden of Proof Post-MILLEDGE 2

Average Weekly Wage and Permanent Partial Impairment Ratings 2

Permanent Partial Impairment Compensation Chart 3

Temporary Total Disability Chart 4

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Indiana Legislature Has Modified Workers' Compensation Benefits

The Indiana legislature has recently approved some amendments and revisions to the Worker's Compensation Act. The major points involve a change in the statute of limitations for reopening a claim for additional benefits, burden of proof issues post the *Milledge* decision, and changes in the Indiana average weekly wage and permanency rates. These changes were made effective July 21, 2006.

Statute of Limitations to Reopen a Claim

The Indiana legislature has now revised and unified the statute of limitations for reopening claims.

Section 22-3-3-27 grants jurisdiction to the Indiana Industrial Board to modify a prior award either on their own motion or on the application of either party. In the past, the statute has allowed certain modifications (entailing medical or temporary partial (TPD) or temporary total disability benefits (TTD)) to take place within two years from the date of payment of last compensation, but limited modifications to the permanent partial impairment (PPI) rating to within one year.

The new statute creates a uniform two-year statute of limitations for any modification of benefits subsequent to an award, agreement to compensation or settlement where a plaintiff's right to future benefits has been left open. This applies to all types of benefits whether they are TTD, medical, TPD or PPI. Either party will now have two years from the date that compensation was last paid to seek modification of an award or non-Section 15 agreement to compensation.

Unfortunately, the legislature has not clarified the definition of the "last day for which compensation was paid." There has been a great deal of litigation on this issue regarding whether it refers to the last date that a claimant actually received a payment, the date that the last check was actually cut, the last date of the of a prior award or agreement for a period of benefits, or the date on which a plaintiff reached maximum medical improvement (MMI) which resulted in termination of benefits such as TTD or TPI. This issue remains a highly contested and debated issue and we expect additional litigation on meaning of this phrase.

Further, the revised Act does not clarify whether these changes only apply to accidents with a date of injury subsequent to the enactment of these changes. Consequently, we anticipate some litigation on these issues.

Burden of Proof Post-MILLEDGE

When the Indiana Supreme Court made its decision in *Milledge v. The Oaks* 784 N.E. 2d 926 (Ind. 2003), the Court adopted a form of positional risk analysis which created a presumption that an injury which arose from a neutral risk was work related. In *Milledge*, a plaintiff, with a pre-existing medical condition, sprained her ankle in the employer's parking lot. Due to complications arising from her pre-existing medical condition, she ultimately underwent an amputation of her foot and lower leg.

The difficulties in that case arose because there was no apparent reason for her to have fallen and sprained her ankle. This was deemed to be a neutral risk and the Court was called upon to determine whether or not there was a causal relationship between the accident and her employment.

The Court noted that where fall is unexplained, it falls into the category of neutral risks, which are neither personal to the employee nor distinctly work related. *Id.* at 933-934. The Court then determined that the correct approach for these cases is to presume that the injury is work related and shift the burden to the employer to demonstrate that there was an idiopathic or strictly personal reason for the fall.

Subsequent to *Milledge*, there have been a number of court decisions addressing whether or not the burden of proof should be shifted to the employer on the issue of the cause of the fall.

In amending the Worker's Compensation Act, the Indiana State Legislature specifically rejected the Court's approach. The amendment to Section 22-3-2-2(a) now states that "proof by the employee of an element of a claim does not create a presumption in favor of the employee with regard to another element of the claim."

We anticipate that the Indiana courts will interpret this to mean that merely because a plaintiff is able to prove some type of injury, will no longer act as a presumption that the injury was work related where the risk was neutral.

Average Weekly Wage and Permanent Partial Impairment Ratings

The Indiana legislature has amended and increased the Average Weekly Wage and Maximum Compensation levels. As with the past several years, the maximum TTD rate has also been increased as a result of these changes. These increases became effective on July 1, 2006.

The legislature also increased the Permanent Partial Impairment ratings. They have now set the numbers that will apply to these categories up to and including at least 2010. We have attached a chart outlining the changes to both of these categories.

**INDIANA WORKER'S COMPENSATION
PERMANENT PARTIAL IMPAIRMENT COMPENSATION,
PER DEGREE OF IMPAIRMENT**

Date of Injury	Degrees	Dollars per Degree
On or after 7/1/2000	1-10	\$1,100
	11-35	\$1,300
	36-50	\$2,000
	51-100	\$2,500
On or after 7/1/2001	1-10	\$1,300
	11-35	\$1,500
	36-50	\$2,400
	51-100	\$3,000
On or after 7/1/2007	1-10	\$1,340
	11-35	\$1,545
	36-50	\$2,475
	51-100	\$3,150
On or after 7/1/2008	1-10	\$1,365
	11-35	\$1,570
	36-50	\$2,525
	51-100	\$3,200
On or after 7/1/2009	1-10	\$1,380
	11-35	\$1,585
	36-50	\$2,600
	51-100	\$3,300
On or after 7/1/2010	1-10	\$1,400
	11-35	\$1,600
	36-50	\$2,700
	51-100	\$3,500

INDIANA WORKER'S COMPENSATION TEMPORARY TOTAL DISABILITY

Note: Temporary Total Disability (TTD) is paid weekly and is based on 2/3 of the employee's average weekly wages (AWW) on the date of the injury. TTD payments are subject to a maximum which varies depending on the date of injury. The minimum AWW remains at \$75.00.

Date of Injury	Maximum AWW	Maximum TTD Rate	Maximum * Compensation
On or after 7/1/96	\$642	\$428	\$214,000
On or after 7/1/97	\$672	\$448	\$224,000
On or after 7/1/98	\$702	\$468	\$234,000
On or after 7/1/99	\$732	\$488	\$244,000
On or after 7/1/00	\$762	\$508	\$254,000
On or after 7/1/01	\$822	\$548	\$274,000
On or after 7/1/02	\$882	\$588	\$294,000
On or after 7/1/06	\$900	\$600	\$300,000
On or after 7/1/07	\$930	\$620	\$310,000
On or after 7/1/08	\$954	\$636	\$318,000
On or after 7/1/09	\$975	\$650	\$325,000

* Represents a combination of TTD, TPD benefits and potential permanent total disability.

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The attorneys at BryceDowney constantly strive to keep you updated regarding the latest developments in Illinois and Indiana workers' compensation law. If you would like more information on any of the topics discussed above, or have any questions regarding these issues or any aspect of Illinois and Indiana Workers' Compensation Law, please contact Storrs W. Downey or Martha Niles at (312) 377-1501, or any member of our workers' compensation team. Copyright 2006 by BryceDowney, LLC, all rights reserved. Reproduction in any other publication or quotation is forbidden without express written permission of copyright owner.