

22nd Annual Workers' Compensation Conference (2023)

BASIC WORKERS' COMPENSATION LAW

SUBSTANTIVE ASPECTS
OF WORKERS' COMPENSATION

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WORKERS' COMPENSATION:

Why do we need it?

Tort law (negligence) is not a compensation system, but a means of making wrongdoers accountable for wrongful (negligent) acts. Many work injuries are not due to Employer negligence (carpal tunnel, back gives out lifting, coal miner develops breathing disorder). The purpose behind workers' compensation is to shift the costs of work injuries to employers.

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WORKERS' COMPENSATION: "THE GREAT COMPROMISE"

Injured Employee receives:

- No-Fault liability
- Speedy Recovery

Employer:

- Compensation as claimant's exclusive remedy and employer's exclusive liability (limited damages). Worker cannot sue Employer.

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3 purposes of workers' compensation

1. Humanitarian purpose: Remedial Act to be interpreted liberally
2. Cost internalization purpose: Cost of injuries to be paid by employers
3. Promotion of safety

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History

1. European origins
2. Federal Legislation: FELA is a federal law enacted in 1908 railroad workers
2. Original PA Act of 1915
(Centennial was: June 2, 2015)
3. Occupational diseases added:
1937, 1939

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History (continued)

1. Major reforms of 1972, 1974 (liberalization)
2. Contemporary Reforms (retractive)
 - a. 1993 (Act 44: medical cost containment)
 - b. 1995 (Act 1: hearing loss)
 - c. 1996 (Act 57: disability, procedure)
 - d. 2006 (Act 147: procedure)
 - e. 2018 (Act 111: IRE re-instated)

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1st element: Employee/Employer relationship (not IC, volunteers)

Critical Statutes:

Sections 103 and 104

"Construction Workplace Misclassification Act" (2010)

Leading Case: *Southland Cable v. WCAB (Emmett)* (1991)

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Employers and Employees Covered

1. Exclusions: number of ee's; corporate officers, domestic; undocumented
2. Ambiguous cases: The control test
3. Temp agencies/PEO's (borrowing employer/employee)
4. Injuries outside PA

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2nd Element: Injury
Casualties & Disablements

Critical Statute: Section 301(c)(1)

Compensable event as "injury," not
"accident" or personal injury by accident

Liberal interpretation, 1972-1987

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Casualties & Disablements

Injury as including occupational diseases, as listed in Section 108

Critical statutes:

1. Section 301(c)(2)
2. Section 108
3. Section 301(e)
4. Section 108(r),301(f) (cancer/firefighters)

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Casualties & Disablements

Leading cases revealing interpretation of the term "injury"

1. *Pawlosky v. WCAB (Latrobe Brewing)* (Pa. 1987) (Note: 30th Anniversary, 2017)
2. *City of New Castle v. WCAB (Sallie)* (Pa. Commw. 1988)
3. *Tooley v. AK Steel* (Pa. 2013)

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Casualties & Disablements

Some special issues:

1. Compensability of mental stress cases
2. Compensability of Hepatitis C
3. Law of "compensable consequences"

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3rd element: Within course and scope

Parameters of coverage: Pennsylvania test of injury "aris[ing] in the course of employment and related thereto"

1. Meaning of "arising"
2. Meaning of "course"
3. Meaning of "related thereto"

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Casualties & Disablements

Leading case: *Krawchuk v. PECO* (Pa. 1983)

Stress heart attack was compensable, even though it occurred off the premises and after work: persuasive expert medical opinion was that claimant's heart attack had its origin in stressful workplace

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Casualties & Disablements

Course of employment and gray areas:

1. Role of the premises
2. Social events
3. Injuries occurring during travel: Routine commuting is not course of employment:
 - * Exception: Traveling employees
 - * Exception: Contract includes travel
 - * Exception: Special Mission
 - * Exception: Special Circumstances

Issue: Telecommuting Employees

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Casualties & Disablements

Affirmative defenses

* Burden of proof is always on employer

1. Not a defense: Personal Comfort (eating, drinking, smoking, horseplay)
2. Defense: Violation of Law
3. Defense: Intoxication
4. Defense: "Reasons personal"
5. Defense: Violation of positive orders
6. Defense: Intentional self-infliction

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Basis/Form/Amount/Period: PA is a
"wage loss state"

[Temporary] Total Disability (TTD)

Can be payable for the duration:

Note: **PA does not recognize, in statute, Permanent Total Disability (PTD)**

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Basis/Form/Amount/Period

[Temporary] Partial Disability (TPD)

Maximum Duration: 500 weeks

1. Pre-Act 57 (1996)

Leading case: *Kachinski v. WCAB* (1987) and

Use of job placement (Voc. Rehab) to show earning power

2. Post-Act 57 (1996): Use of expert to show earning power; Leading case:

Phoenixville Hosp. v. WCAB (2013)

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Basis/Form/Amount/Period

> Partial Disability
after 104 weeks of TTD:
maximum 500 weeks, effective, based on
MOST RECENT *AMA Guides* rating, when
below 35% impaired

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ACT 57-based IREs:

INVALIDATED in

PROTZ v. DERRY AREA SCH. DIST.

(Pa. 2017)

leading case: *Whitfield v. Hahnemann*

(Pa. Commw. 6.6.2018)

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2018: IREs Restored

Partial Disability after 104 weeks of TTD:
maximum 500 weeks, effective, based on *AMA Guides*
6th edition rating, when below 35% impaired, after
receipt of 104 weeks of TTD.

AMA Guides 6th OK: *AFL-CIO case* (Pa. 2019).

Credit received for prior partial disability

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**Under the
Pennsylvania Act,
no PPD category
(of any kind)
exists.**

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Basis/Form/Amount/Period

1. Specific Loss ("scheduled benefits" for permanent injuries.. "loss of use of a body member (arm, hand, finger, foot, toe) for all practicable intents and purposes
2. Death benefits

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Basis/Form/Amount/Period

Benefit Calculation

1. The Average Weekly Wage
2. TTD benefit rate

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Basis/Form/Amount/Period
TTD Benefit Rate:

1. Maximum for 2022: \$1,273.00 (SAWW)
2. Three formulas:
 - a. $\frac{2}{3}$ of AWW
 - b. $\frac{1}{2}$ of SAWW (fixed)
 - c. 90% of AWW

(refer to the Bureau's Quick-Reference Benefit Chart, p.6 of material)

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Medical Benefits

Critical statutes: Section 306(f.1),
Section 306(f.2)

Employer responsible for reasonable and necessary medical care, "as and when needed"
... thus: potentially, medical marijuana?
Fegley v. Firestone Tire, 291 A.2d 940 (Pa. Cmwlth. 2023) (Employer required to reimburse claimant for medical marijuana)

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Medical Benefits

Cost-Containment

1. Employer control (lack of employee choice) for 90 days. (must provide list of designated panel medical providers)
2. Medical Fee Schedule: 113% of Medicare (*adjusted annually*) for treatment expenses; Fee Review
3. Pharmaceutical controls: 110% of wholesale;
4. Utilization review

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Subrogation

Critical statute: Section 319

Leading case: *Heckendorn v. Consolidated Rail Corp.* (Pa. 1983)

(employer cannot be joined in third-party action, even if alleged to have been negligent)

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Subrogation ... of Employers

1. Subrogation right broadly enforced, but not an assignment. *And note new rule:* lien does not include continuing medicals
2. Subrogation applies to all damages (except loss of consortium)
3. Employer may secure a subrogation waiver in Pennsylvania

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Subrogation

...of group health insurers and S&A payers.

Subrogee must exercise diligence or risk waiver

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Compromise Settlement (C&R)

Critical Statute: Section 449 as of 1996

- A. All benefits may be released
- B. All "claims" may be settled: original, accepted; no blanket releases
- C. Approval by WCJ is required; a hearing is required in every case
- D. Criterion of approval: whether the claimant understands the full legal significance of the settlement

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Critical Aspects of Litigation

Adjudicatory Structure

1. Workers' Compensation Judge
(final fact-finder)
2. Workers' Compensation Appeal Board
(substantial evidence and legal error review)
3. Commonwealth Court/Pennsylvania
4. Supreme Court (same review)

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Critical Aspects of Litigation

1. Claimant Petitions: Claim, Reinstatement, Review, and Penalty
2. Employer Petitions: Termination, Suspension, Modification, Review
3. Utilization Review
4. Fee Review
5. Before Adjudication of Such Petitions: Mediation of Cases
6. Role of UEGF

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THE END
Thank you.

