



News & Notes

A Note from the Director, Marianne Saylor

In 2021, the bureau implemented an electronic payment portal for payment of assessments. Beginning October of 2022, Self-Insurance renewal and initial application fees will also be eligible for electronic payment. This enhancement is part of the bureau’s ongoing customer service initiative. In the coming months, you may receive an email invitation to take part in a survey about a WCAIS process. Please respond so that we can hear from you about ways we can improve your WCAIS experience. Have a great summer and don’t forget to use sunscreen and wear a hat!

2022 Governor’s Occupational Safety and Health Conference October 31 – November 1 Hershey Lodge and Convention Center Hershey, PA

We are excited to share that registration for the 2022 Pennsylvania Governor’s Occupational Safety & Health Conference (GOSH) is now open!

Don't miss this opportunity to get together with industry peers in the Expo Hall and during the Welcome Reception on Monday evening.

At GOSH, you will get two days to:

- Connect with fellow safety professionals, exhibitors, and risk management consultants.
- Learn from experts during the more than 30 breakout session; topics include medical marijuana's effect on a drug-free workplace, active shooters, suicide prevention, and more!
- Earn continuing education credits.
- Get inspired by two keynote sessions, What's Your Safety Story: How to Make Safety Personal with Frontline Employees and Influencing Safety; Creating a Culture of Engagement.

Click the button below to view session topics and speakers, make hotel reservations, register, and more!



Early bird pricing ends September 30th!

If you have any questions, please contact the GOSH office at GOSHConference@wannerassoc.com or call 717-441-6043.

We hope to see you there!

The 2021 Pennsylvania Workers’ Compensation and Workplace Safety Annual Report is [available here](#).

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News & Notes is a quarterly publication issued to the Pennsylvania workers’ compensation community by the Bureau of Workers’ Compensation (BWC) and the Workers’ Compensation Office of Adjudication (WCOA). The publication includes articles about the status of affairs in the workers’ compensation community as well as legal updates on significant cases from the Commonwealth Court. Featured is the outstanding article entitled “A View from the Bench,” in which judges from the Pennsylvania Workers’ Compensation Judges Professional Association summarize recent key decisions from the Commonwealth Court that are of interest to the workers’ compensation community.

We trust that stakeholders in the Pennsylvania workers’ compensation system will find this publication interesting and informative, and we invite your input regarding suggested topics for inclusion in future publications. Suggestions may be submitted to RA-LIBWC-NEWS@pa.gov.

- Marianne Saylor, Director – Bureau of Workers’ Compensation (BWC)
- Joseph DeRita, Director – Workers’ Compensation Office of Adjudication (WCOA)
- Alfonso Frioni Jr., Chairman - Workers’ Compensation Appeal Board (WCAB)

▼ Assessment Season is Coming Soon!

In 2021, the bureau created an easy-to-use payment portal for the payment of assessments. The portal is available 24/7 and can process payments up to \$25,000. If you have a larger amount, please reach out to bureau staff who will

help you make an electronic payment. Please have your assessment notice handy. For assistance, please email ra-libwc-si@pa.gov.

▼ PA Training for Health & Safety (PATHS) Your No-Fee Safety Training Resource

The Pennsylvania Training for Health and Safety (PATHS) program makes safety resources and training accessible to individuals everywhere. So far this year, PATHS has conducted 393 training sessions for more than 19,500 individuals in 48 states and 14 countries. Safety training on 219 topics is available for employers, and most are free of charge. These trainings apply to health & safety concerns within

the workplace, including substance use disorder and opioid abuse-related topics.

Training is aimed at reducing business costs, reducing injuries, and saving lives in Pennsylvania.

Questions? Email PATHS at ra-li-bwc-paths@pa.gov or visit our website at www.dli.pa.gov/PATHS.

▼ Workplace Safety Committee Certification Nearly \$860 million and counting

More employers are discovering that safety really does pay! Employers who follow Pennsylvania's workplace safety committee requirements and regulations can apply for state certification and receive annual five percent discounts on workers' compensation insurance premiums. Application is made through the Pennsylvania Department of Labor & Industry, Bureau of Workers' Compensation, Health & Safety Division.

The basic committee requirements for certification include that a minimum of two employee representatives and two employer representatives meet monthly and that the committee be in operation and in compliance with requirements for at least six months prior to submitting an initial application.

More than 12,960 workplace safety committees certified in Pennsylvania and representing over 1.6 million employees have accumulated almost \$860 million in total savings from the five percent workers' compensation insurance premium.

In addition to the five percent workers' compensation insurance premium discount, certified workplace safety committees help reduce the employer's cost of workers' compensation insurance by identifying workplace hazards, reducing injuries, and reducing claims.

In an increasingly competitive business climate, any opportunity to save money is welcomed. A workplace safety committee not only improves the safety of your operations, but also adds to the bottom line and clearly shows employees that management cares about their well-being. When that's the case, everybody wins!

For more information on setting up a workplace safety committee for your business and to learn more about the program and requirements, visit [Workplace Safety Committee Certification Resources](#).

Questions? Email us at ra-li-bwc-safety@pa.gov.

▼ 21st Annual PA Workers' Compensation Conference

The 21st Annual Workers' Compensation Conference was held June 6-7 in Hershey, PA. This conference is recognized as one of the top five workers' compensation conferences in the nation. Staff, led by Mistie Snyder, organized, and accomplished another successful conference. More than 1,000 people attended this year's conference. A few of the popular and timely topics included: Working from Home – The Proactive and Reactive Issues; Stress, Anxiety, and Burnout in the

Pandemic Era; and COVID 19 – Issues Facing Employees and Employers.



**22nd Annual PA Workers' Compensation
Conference
June 1-2, 2023**

▼ Prosecution Blotter

Section 305 of the Pennsylvania Workers' Compensation Act specifies that an employer's failure to ensure its Workers' Compensation liability is a criminal offense. The bureau's Compliance Section is responsible for investigating potential 305 violations and referring cases for potential prosecution. Violations may be classified as either a third-degree misdemeanor or, if intentional, a third-degree felony. Each day the employer is in violation of Section 305 is charged as a separate offense.

Defendants who are first time offenders may be eligible to enter the Accelerated Rehabilitative Disposition (ARD) program. Those who enter the ARD program waive their right to a speedy trial and statute of limitations challenges during the period of their enrollment; they further agree to abide by

the terms imposed by the presiding judge. Upon completion of the program, defendants may petition the court for the charges to be dismissed. Although acceptance into the program does not constitute a conviction, it may be construed as a conviction for purposes of computing sentences on subsequent convictions.

The violators and locations for the past three months are as follows:

McKean County

On May 26, 2022, Christopher R. Stilson, owner of the Two-Mile Inn, entered into an agreement with the Commonwealth of Pennsylvania to pay the Uninsured Employers Guaranty Fund \$13,000 in restitution to resolve all criminal charges pending against him in McKean County, PA.

▼ YouthRules!

The *YouthRules!* initiative promotes positive and safe work experiences for teens by providing information about protections for young workers to youth, parents, employers, and educators. Through the *YouthRules!* initiative, the U.S. Department of Labor and its partners promote positive and safe work experiences that help prepare young workers in the 21st Century workforce.

From the [YouthRules! website](#) you can quickly access information about federal and [state](#) labor laws that apply to young workers. The website educates teens on the rules, and provides information for parents, educators, and employers.

As part of the *YouthRules!* initiative, the U.S. Department of Labor and its partners develop and distribute informational materials, provide training

on federal and state rules governing young workers, increase awareness through public service announcements, and develop other tools designed to increase compliance with federal and state laws.

The Wage and Hour Division (WHD) is committed to providing employers with the tools they need to operate in compliance with the variety of labor laws enforced by the division. WHD offers several useful compliance resources intended to provide employers with readily accessible, easy-to-understand information relevant to both their rights and to their responsibilities under the law. From our interactive E-laws advisor to a complete library of free, downloadable workplace posters, this site offers employers critical information to guide them toward operating their businesses in full compliance with federal labor regulations. [View available resources for employers.](#)

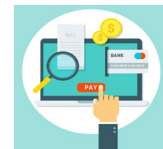
▼ WCAIS Updates

WCAIS Digital Transformation of Health Care Services, Entry of Appearance and More

Digital Transformation of the Health Care Services (*Fee Review, Utilization Review, and IRE*), Entry of Appearance and more for the Workers' Compensation Automation and Integration System (WCAIS) is coming soon.

These screens will be transformed into a modern user experience in October 2022. Screens and process flows will have a different color scheme, look, and feel, while the content remains the same.

Save Time ... Pay Online



Starting Oct. 1, 2022, the bureau is pleased to announce Self-Insurance Application Fees (*Initial, Affiliate, Renewal, and Group Annual Reports*) may be paid online.

More information coming soon!

▼ Claims Corner

Trading Partner Agreements are Due!

We have requested updated information for trading partner agreements. The new Trading Partner Agreement Packet is required from all Trading Partner companies submitting EDI transactions to Pennsylvania, including Web Portal Filers, Direct-File Flat Filers, and companies using a Transaction Partner.

Before sending, please be sure your packet is complete and that you upload it to your customer service ticket when submitting. View the Trading Partner Checklist [here](#).

Completed Trading Partner Agreement Packets, or any questions regarding the Trading Partner Agreements, may be submitted in WCAIS using the "Submit a Question" option from the Customer Service drop-down menu. The category should be "EDI," and the sub-category should be "Trading Partner Agreements."

The Trading Partner Agreement Packets are due by Oct. 15, 2022.

Speaking of Trading Partner Agreements...

We have requested the updated trading partner agreements because the bureau is working on automating this process. We have a long road ahead of us, but we will use this year's collected information to create a database that will allow stakeholders to open next year's document in WCAIS and your current information will be pre-populated. You will need to verify the information is correct or update any changes and submit the packet.

Claim/EDI Monthly Stakeholder Meeting

Please join us for our monthly stakeholder meeting for more information on this trading partner agreements and other exciting bureau news.

If you're not currently a part of this monthly meeting and want to join, send us a customer service ticket in WCAIS using the "EDI" category and the "Miscellaneous" sub-category and we will get you added to the invite. Not only does it give us a chance to share pertinent bureau information, but it also gives you a chance to interact with your peers regarding workers' compensation!

Actions Tab Activity

In our ongoing effort to keep information in WCAIS accurate, we recently made a change to the functionality of the Actions Tab. Effective July 8th, when uploading a form under the Actions Tab, Upload Claim Forms feature, you will need to select your specific document type before uploading.

If the form type you need is not listed in the drop-down menu, please upload it to the Documents and Correspondence Tab. Upload as a miscellaneous document and add the document type in the free-form text box.

Below is a complete list of the forms available for upload on the Actions Tab:

- Agreement for Compensation for Disability or Permanent Injury (LIBC-336)
- Supplemental Agreement for Compensation for Disability or Permanent Injury (LIBC-337)
- Agreement for Compensation for Death (LIBC-338)
- Supplemental Agreement for Compensation for Death (LIBC-339)
- Agreement to Stop Weekly Workers' Compensation Payments (Final Receipt) (LIBC-340)
- Third Party Settlement Agreement (LIBC-380)
- Notification of Suspension or Modification (LIBC-751)
- Statement of Wages (LIBC-494C)
- Statement of Wages (LIBC-494A)
- Marriage Certificate
- Death Certificate or Coroners Report
- Notice of Workers' Compensation Disability Status (LIBC-764)

Please be sure to upload each claim form individually so each of these forms will clearly show in the claim history grid to all parties. Please be sure to upload forms through WCAIS instead of mailing them to the bureau. Uploading documents provides both time and cost savings for all of us!

▼ Kids' Chance of Pennsylvania

At Kids' Chance of Pennsylvania, we're dedicated to helping our kids who need it most – those who need assistance for college or vocational education because a parent was killed or injured in a work-related accident. The hardships created by the death or serious disability of a parent often include financial ones, making it difficult for deserving young people to pursue their educational dreams.

Since its inception in 1997, Kids' Chance of PA has awarded over 1,000 scholarship grants to eligible students amounting to more than \$2.5 million in tuition assistance. During the 2021-2022 academic year, we awarded \$120,250 in scholarships to 40 students. Through our involvement with the PHEAA/PATH program, in many cases we have been able to double our awards to qualified students, further relieving their financial burden! Seventeen of our recipients received an additional \$46,250 in PATH grants.

Kids' Chance of Pennsylvania scholarships are made possible by the generous contributions of our scholar sponsors, corporate and community

partners, and donors. Donations can be made online, by check, by making us your charity of choice using Amazon Smile or through corporate donation programs like United Way or SECA.

In addition to the donation sources listed above, Kids' Chance of PA holds several fundraising events throughout the year. Our headline this fall will be our 25th Anniversary Gala, to be held the evening of October 14 at the Lancaster Marriott. We will be celebrating 25 years of providing hope, opportunity, and scholarships to children of injured PA workers. All are invited to join in the celebration and dance the night away!

Everything our organization does is for the students. Kids' Chance of PA is making a significant difference in the lives of these children, helping them to pursue their educational goals. For more information about how you can help support Kids' Chance, please contact us at 215-302-3598 or info@kidschanceofpa.org or visit www.kidschanceofpa.org.

▼ Summer Safety Tips

Don't let mosquitoes and ticks ruin your carefree summer fun. As we spend more time outdoors for activities like camping, hiking, swimming, picnicking, and barbecuing, there is a greater chance of getting bitten by mosquitoes and ticks. According to the American Mosquito Control Association there are 176 known species of mosquito in the U.S.—putting Americans at risk from coast to coast. And while mosquitoes may be the most obvious detractor from summer fun – ticks are silent but dangerous. Most active during warmer months (April to September), it is especially important to be vigilant of blacklegged ticks, more commonly known as deer ticks, especially if you live in the Northeast, Mid-Atlantic, North-central or Northwest.

Mosquitoes and ticks are more than just itchy and annoying – if infected, these pests can pose a major health risk to people by possibly transmitting diseases. Follow these tips to prevent mosquito and tick bites this summer:

- Use insect repellents containing DEET (N, N-diethyl-meta-toluamide) when you are outdoors. Be sure to follow the directions on the package.

- Consider staying indoors at dusk and dawn when mosquitoes are most active.
- Wear long-sleeved shirts and long pants and tuck your pant legs into your socks or boots.
- Use a rubber band or tape to hold pants against socks so that nothing can get under clothing.
- Tuck your shirt into your pants. Wear light-colored clothing to make it easier to see tiny insects or ticks.
- When hiking in woods and fields, stay in the middle of trails. Avoid underbrush and tall grass.
- If you are outdoors for a long time, check yourself several times during the day. Especially check in hairy areas of the body like the back of the neck and the scalp line.
- Inspect yourself carefully for insects or ticks after being outdoors or have someone else do it.
- If you have pets that go outdoors, spray with repellent made for their breed/type. Apply the repellent according to the label and check your pet for ticks often.
- Get rid of mosquito breeding sites by emptying sources of standing water outside of the home, such as from flowerpots, buckets, and barrels.

▼ A View from the Bench

Angela DiPaolo v. UPMC Magee Women's Hospital, No. 878 C.D. 2021 (filed June 13, 2022)

In *DiPaolo v. UPMC Magee Women's Hospital*, the Commonwealth Court rejected the claimant's argument that Act 111's provisions allowing employers to credit previously paid benefit weeks violate either due process or due course of law principles. The court further held that the claimant failed to show that by reenacting the IRE process, Act 111 violates Article III, Section 18 of the Pennsylvania Constitution.

The claimant, DiPaolo, sustained an accepted work-related injury on Aug. 30, 2008. She underwent an Impairment Rating Evaluation (IRE) in 2011 and was accorded a 6% whole-person impairment rating. Her benefit status was changed from temporary total disability (TTD) to temporary partial disability (TPD) based on the 2011 IRE. At the time the 2011 IRE was performed, the governing statutory provision was former Section 306(a.2) of the Workers' Compensation Act. Subsequently, in *Protz v. Workers' Compensation Appeal Board (Derry Area School District)*, 124 A.3d 406 (Pa. Cmwlth. 2015) (*Protz I*), the previous IRE statute was found to be unconstitutional, and the Commonwealth Court determined that IREs should be subject to the Fourth Edition of the AMA Guides, the edition in effect when the statute was enacted. In *Protz v. Worker's Compensation Appeal Board (Derry Area School District)*, 161 A.3d 827 (Pa. 2017) (*Protz II*), the Supreme Court struck Section 306 (a.2) in its entirety. Based on the *Protz* cases, claimant sought reinstatement of her TTD benefits, which was granted as of Feb. 19, 2016. Thereafter, Act 111 of 2018 (Act 111) was enacted which replaced the former Section 306 (a.2) with Section 306(a.3). Like the previous provisions, Act 111 enabled the employer to require a claimant to undergo an IRE once the claimant had received at least 104 weeks of total disability benefits. Act 111 reduced the previous threshold impairment rating for modification from TTD to TPD status from 50% to 35% whole person impairment. Also, under Act 111, as with the previous provision, there is no time limit on the receipt of TTD benefits, but TPD benefits after modification via an IRE is limited to 500 weeks of benefits. Act 111 specifically granted employers credit for any weeks of TTD or TPD benefits paid prior to its effective date of Oct. 24, 2018, which allowed employers to immediately seek IREs and pursue modification for employees like claimant whose injuries occurred prior to Act 111.

Based on Act 111, the employer requested that claimant undergo another IRE, which she did on Dec. 3, 2019. The 2019 IRE returned an impairment rating of 23%. Employer filed a Modification Petition seeking to change the claimant's status to TPD. Claimant raised and preserved constitutional challenges to Act 109, which were noted by the workers' compensation judge, but having no jurisdiction to rule on such issues, the workers' compensation judge granted the employer's petition and modified benefits to TPD status. The board affirmed. The claimant then appealed to the Commonwealth Court.

The Commonwealth Court noted that the due process and due course of law guarantees of the constitution, though different, both forbid retroactive application of laws that would affect vested rights. The court held that claimant had no vested rights to TTD benefits. The court stated that a vested right is "something more than a mere expectation based upon an anticipated continuance of existing law. It must have become a legal title or equitable to the present or future enforcement of a demand, or a legal exemption from a demand made by another." The court noted that while a claimant has certain rights to benefits until such as time as he or she is found to be ineligible for them, there is a reasonable expectation under the act that benefits may change. The court noted that Act 111 simply provided employers with a means to change disability status from total to partial.

The court was unmoved by claimant's assertion that IREs were in violation of the constitution's provision that the legislature may enact laws requiring payment of "reasonable compensation." Article III, Section 18. Claimant argued that this rule requires that employers must prove restored earning power prior to shifting workers' benefits from TTD to TPD. The court found that the IRE process could stand alone as a method of modifying a claimant's benefit status and that evidence of a resumed earning power in the traditional manner was not required for that modification. The court notes that when IREs were introduced in 1996, they were part of a reform effort "intended to reduce rising workers' compensation costs and restore efficiency to the workers' compensation system." It is noted that our workers' compensation laws balance the competing interests between employers and employees, which could be detected in the lowering of the impairment threshold from 50 percent to 35 percent. The court did not find the IRE process under Act 111 to be inherently unreasonable, nor did they find that

A View from the Bench

Cont'd. from Page 6

Act 111's restoration of the IRE process to violate the "reasonable compensation" aspect of Article III, Section 18 of the Pennsylvania Constitution.

Montano v. Advance Stores Co., Inc. t/a Advance Auto Parts (WCAB), No. 732 C.D. 2021, filed June 27, 2022 (Pa. Cmwlth. 2022)

This case involves claimant's Reinstatement Petition, which requested ongoing TTD benefits from the date that he was fired while working a modified job with restrictions for the accepted work injury. Employer alleged that the termination was unrelated to the work injury as it was due to claimant's poor job performance.

An employer witness and business record, found to be credible by the workers' compensation judge, revealed that claimant had failed to correctly complete paperwork required by the modified job and that he had been repeatedly verbally warned about this. The workers' compensation judge credited claimant's medical experts as to his work-related diagnoses, but credited defendant's expert with respect to claimant's restrictions, namely that claimant could still perform the modified duty job that he had been performing for employer for more than a year after the work injury, prior to termination. The workers' compensation judge also found that claimant's earnings from the modified job fell below his pre-injury earnings, thus entitling him to TPD benefits as of the date of the work injury.

The workers' compensation judge denied reinstatement to TTD benefits following termination (except for granting two limited periods of TTD following surgeries that rendered him unable to perform the modified job). The workers' compensation judge awarded ongoing TPD benefits even after termination, based on claimant's

expected earnings had he continued the modified duty job. In short, the judge found that TPD benefits were payable due to the ongoing partial disability related to the work injury, but that TTD benefits were not payable because the termination was unrelated to the work injury and the modified job would still be available to claimant but for his termination due to poor job performance.

In his appeal to the Commonwealth Court, claimant first alleged that there was no evidence to show bad faith or willful misconduct on his part to merit denial of TTD reinstatement. The court cited Vista International Hotel v. Workmen's Compensation Appeal Board (Daniels), 742 A.2d 649 (Pa. 1999), noting that a claimant entitled to TPD benefits before termination is generally entitled to TPD benefits following termination. However, whether such claimant is entitled to TTD benefits depends on whether the employer can demonstrate that suitable work was available or would have been available but for circumstances which merit assigning responsibility of the discharge to a claimant, such as a claimant's lack of good faith. The court added that an employer can establish a lack of good faith by proving that it discharged a claimant for misconduct.

Claimant also argued that employer failed to follow its progressive disciplinary policy in firing claimant, because the employer witness indicated she did not know whether that policy was followed - she only knew of her multiple verbal warnings to claimant. The court held that "employer's purported failure to follow its progressive discipline policy does not compel the award of TTD benefits because it in no way affects the workers' compensation judge's finding of bad faith on claimant's part." The issue, the court stated, is whether, through no fault of claimant, the injury has affected claimant's earning ability. The unemployment concept of "willful misconduct" is not the standard in workers' compensation, which goes by the lesser "lack of good faith" standard.

*News & Notes is published quarterly by the Bureau of Workers' Compensation
Forward questions or comments about this newsletter to the Bureau of Workers' Compensation,
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