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INMAN & FITZGIBBONS, LTD.

From the Authors and Legal Editors:

In 2006, our law firm, Inman & Fitzgibbons, Ltd., joined the Illinois Chamber of Commerce in the wake of the 2005 amendments to the Illinois Workers' Compensation Act, and we have been active members of their Employment Law Council's Workers' Compensation Committee since then. We were honored when asked to provide you with this update to the Illinois Chamber of Commerce Workers' Compensation Manual. We thank you for taking the time to become involved in Illinois Workers' Compensation as well.

Our firm has been in practice in Illinois for over 25 years defending the interests of employers before the Illinois Workers' Compensation Commission, as well as State and Federal courts. At the request of our clients, we have in recent years expanded our practice into the surrounding states of Indiana, Missouri, Iowa, Wisconsin and Michigan. We are truly a Midwest Regional Defense firm representing and defending employers in both workers' compensation and civil liability matters.

We currently have 22 practicing attorneys, 10 of whom are licensed in more than one state and a total of more than 500 years of combined experience among all of our attorneys. Client service has always been the top priority for our firm.

What we anticipated would be a daunting task of updating and/or writing new chapters to this Manual was quickly diminished when we reviewed the work of our predecessors responsible for the prior editions. To them, we say thank you for the well-written and researched content. Our firm focused on updating those sections that needed updating, reorganizing some of the chapters and chapter content, and streamlining some of that content to hopefully provide a more accessible reference for you. We are grateful to our attorneys for the time they devoted to this project.

Our firm also thanks the Chamber's Workers' Compensation Committee members, especially Chairman Jay Dee Shattuck, for all of their continual and tireless efforts to effectuate fair legislation that balances the remedial intentions of this Act with the rising costs to businesses in Illinois.

Finally, we thank the staff of the Chamber for their guidance through this process of updating the Manual and for allowing us to continue to educate employers throughout the State on their workers' compensation claims best practices. We hope that you will find this Manual a helpful extension of that education and a effective reference tool for your business.

Yours truly,

G. Steven Murdock, Vice President

Frank Johnston is a graduate of Michigan State University (2005) and The John Marshall Law School (2008) with legal career that already includes extensive litigation and trial experience. Frank joined Inman & Fitzgibbons, Ltd. as an Associate Attorney in 2015 and works in our Champaign office. He represents employers, third-party administrators, and insurance companies both in the firm's workers' compensation defense practice as well as in their civil litigation and subrogation practice. He has presented on various topics for the Illinois Chamber of Commerce, the Champaign County Chamber of Commerce, the Vermilion County Chamber of Commerce, and bar associations across East Central Illinois.

Introduction, Foreword & Acknowledgements

By Jay Dee F. Shattuck, CAE
Executive Editor

Welcome to our 2018 Edition of the Illinois Chamber's Workers Compensation Manual. You will find this Edition full of more insight given the implementation and court review of the 2011 legislative changes.

Steve Murdock and his partners at Inman Fitzgibbons provided their professional day-to-day expertise in workers' compensation as the authors of this Edition of the Manual. As a law firm that does outstanding work on behalf of employers defending workers' compensation claims, we appreciate their active involvement in the Illinois Chamber and the Employment Law Council's Workers' Compensation Committee. The firm did a great job and were great to work with.

Foreword

The election of Bruce Rauner as Governor in 2014 raised expectations for additional reform. The Illinois Chamber engaged in extensive negotiations shortly after Gov. Rauner's inauguration which were off and on through the legislative session in 2017. We remain hopeful in 2018 that the General Assembly will agree to advance helpful changes to the Governor for his signature. Two measures were sent to the Governor in 2017 which were passed solely with democrat votes. The Chamber analysis found that neither bill would help employers and would actually likely increase costs for businesses. We urged the Governor to veto which he did.

While progress on the legislative front has been lacking, the Governor has emphasized the upgrading of the Commission on a personnel level. Feedback from Chamber members has been especially positive regarding the quality and professionalism of the Commission leadership from Joann Fratianni, her executive staff, Commissioners and arbitrators. After nearly a decade following the Chamber's settlement of its litigation regarding excessive fees to support the Commission, Gov. Rauner's office aggressively put the nearly $40 million settlement fund monies to work. A portion of the funds were used to pay off Rate Adjustment Fund debt, funding for research work being done in Illinois by the Workers' Compensation Research Institute and for significant improvements to the information technology systems at the Commission. These are important improvements that were ignored until Bruce Rauner was elected Governor.

Get Involved in the Illinois Chamber; Help Press for Continued Reform of Workers' Compensation

The Illinois Chamber continues to pursue additional changes to Illinois workers' compensation system that will bring better medical care to injured workers, assure that employers are paying for truly work-related injuries and reduce employer costs to return Illinois' competitiveness when it comes to the cost of workers' compensation to job creators.

The Illinois Chamber's Employment Law Council (ELC) is the primary source by which our members provide input and guidance on human resources issues such as workers' compensation. Our Committee is comprised of employers of all sizes (many self-insured), insurers, defense attorneys and medical providers. We bring these various stakeholders together to help us shape the reform to meet our objectives and implement the strategies in Springfield to successfully change the law.

To see what we are doing on behalf of Illinois business and how you can get engaged and involved go to *www.ilchamber.org*.

Table of Contents

Chapter 1

Workers' Compensation in Illinois: An Overview

General Principles of Illinois Workers' Compensation

- Perhaps the most important point to acknowledge is that the Act is a *remedial* act, which means that the Illinois Workers' Compensation Act and the Illinois Occupational Diseases Act are designed to provide efficient remedy in the form of medical benefits and compensation for loss of earnings to employees injured in accidents while performing work duties. At all times, the Illinois Workers' Compensation Commission and the courts will view litigated cases from this perspective.
- The Act is a *strict liability* act, which means that the employee need not prove negligence on the part of the employer, and the negligence of the employee is no defense, to recover under the Act. If the accident "arose out of" and "in the course" of the employee's employment with the employer and timely notice of the accident was provided by employee to the employer, then the employee is entitled to benefits under the Act that are deemed medically causally related, reasonable and necessary to facilitate the employee's recovery from the injuries and any loss of earnings resulting from those injuries. It is a matter of "strict liability."
- While the Act is statutory, it is brief and subject to varying interpretations just by the very nature in which it is written. The Act can be and is summarized very succinctly in a handbook distributed by the Illinois Workers' Compensation Commission. *(see https://www2.illinois.gov/sites/iwcc/Documents/act.pdf).*
- The law is actually defined in volumes of cases over the past 100+ years of litigation. Each case is subject to its own facts and application of relevant case law.
- This Manual is not a substitute for sound legal advice, but merely offered as a guide to the laws in Illinois. The authors strongly recommend consulting with legal counsel before making decisions on how to handle coverage, claims or other issues relating to workers' compensation and occupational diseases claims.

Chapter 2

Illinois Workers' Compensation 101

The Fundamentals

Illinois Jurisdiction Required

The Illinois Workers' Compensation Commission has jurisdiction to hear a claim based upon any one of the following three:

- The accidental injury occurred in Illinois, OR
- The employee's employment is principally localized within the state of Illinois, regardless of the place of accident or place where the contract of hire was made, OR
- The contract of hire was formed in Illinois, i.e., the last act necessary to form a contract of hire was performed in Illinois.

Jurisdiction May Exist in Multiple States

In some cases, it is possible that more than one State will have jurisdiction to hear a claimant's case and the claimant will be entitled to recover benefits under the Workers' Compensation Acts of both States. When that occurs, the employer will be entitled to receive credit for whatever compensation has been provided under the Workers' Compensation Act of one State toward the compensation being claimed in another State.

Statute of Limitations for Employee Filing of Claims

Other than for cases caused by exposure to radiological materials or equipment or asbestos, employees or their representatives must file their application for benefits under the Illinois Workers' Compensation Act within three years from the date of the accident, or two years from the last payment of compensation, whichever is later.

> *Note: Payment of medical bills, through worker's compensation insurance or an employer-funded group insurance plan, constitutes "payment of compensation." Group medical payments made in a case that is subsequently found to be compensable under the Workers' Compensation Act have been found to compensation that extends the statute of limitations.*

Further, if the employer or its agent has engaged in communications with a claimant which led the claimant to believe that his claim would be honored, and

Chapter 3

Notice Provisions – Employee/Employer

Employee Notice Requirements

Notice of an accident is a jurisdictional issue, meaning failure to provide proper notice will bar compensation. The rule is that an injured employee must give notice to the employer as soon as practicable but not later than 45 days after sustaining an accident injury.

The statutory requirements for how and when an injured employee provides notice are very broad and have been liberally interpreted by the Illinois Courts. Only a complete lack of notice within 45 days will act as a bar to compensation under the Act. In addition, the employer may need to show that it was prejudiced by the late or lack of notice. Prejudice can be shown by the employee undertaking invasive treatment before the employer has the opportunity to investigate and undertake defense options such as a utilization review or Section 12 independent medical examination.

The Act does not require notice to include specifics of the date, time, or place of accident, but rather only requires the *approximate date and place* of the occurrence *if known*. Further, notice need not be written but may be provided orally. Illinois courts have found sufficient notice provided in scenarios when an employer was notified of a condition but not an accident. The courts have held that notice was sufficient when an employee notified the employer of a medical condition but did not indicate that the condition was related to work.

The notice time requirement is extended even further by the subsections (1) which tolls (extends) the notice time limitation for those under a legal disability – either the injured worker's or a dependent's in the case of death – until a guardian is appointed; or (2) when the injury is due to exposure to radiological materials or equipment – notice is extended to 90 days *after the employee knows or suspects he has received an excessive dose of radiation*. Section 6(c)(2) seems to require notice of an "accident" 90 days after symptoms of the injury begin to manifest. Thus the focus in that scenario is on the injury manifestation and not the accidental occurrence/event.

Another special situation occurs with a repetitive or cumulative trauma accident. Illinois court have developed a different set of rules that govern notice, where the accident date can be one of several dates making accident and notice a moving target.

The statutory time limit for providing notice supersedes employer policies. The Commission uses the statutory time limit to determine whether notice was

timely instead of looking to the employer policy, even if that policy requires an earlier report of accident. Thus, even if your employer policy is notice of accidental injuries must be made within 48 hours, this does not govern the validity of notice provided two weeks after the accident.

The Courts have liberally construed the notice requirement and have found defective and incomplete notice will satisfy the jurisdictional requirement. The denial of a claim because the employer asserts they did not have notice of the accident is generally a very weak basis for denial of benefits but can be successful. Remember "late" notice – which can even be by receipt of an Application for Adjustment of Claim – received within 45 days of the injuring event is still sufficient to overcome this jurisdictional hurdle. While notice is a difficult basis for denying a claim, it can be used in conjunction with other facts to impeach the credibility of the claimant and thus assist in the denial of compensation on other grounds.

Despite the broad allowance for notice provided by the Act, all employers should have a very clear policy for reporting accidental events. Many times an event will occur and the workers involved will either deny the need for medical care or not realize an injury was sustained until hours or even days later. Having a policy that requires the event to be reported with the names of the employees involved and a description of the event will save time and money when a claim is later asserted. Any company policy on this issue must be known to the workers and enforced by those in supervisory positions. Just having the policy in a handbook that is provided at the initiation of the employment relationship is not enough. Employees should be regularly reminded of the policy and it should be adhered to by the employer. Supervisors that fail to document accidental events should be subject to discipline as should the employee that fails to follow the reporting policy of the company.

Suggested Employer-Directed Notice Policies

Regardless of the statutory 45-day notice allowance by the Act, it is strongly recommended that employers have a strict written notice policy. The following are suggestions for accident reporting policies:

- Immediate notice required after an accidental event even if injuries are not immediately apparent
- Failure to report an accidental event is subject to discipline
- Require employees to immediately notify their supervisor of the accidental event whether by direct communication or by written description of the event if the supervisor is not readily available
- Require supervisors to complete accident investigation reports that includes photographs of the accident site and a written statement by all employees involved in the event

Chapter 4

Employer Involvement in Claims

It may surprise most Employers that their role in claims begins prior to a reported injury. Reduction of and efforts to eliminate "lost-time" injuries require the employer's role first and foremost to be that of prevention. To that end, the employer must address its company culture, hiring practices, supervision, employee training, discipline, termination, and know to whom it can turn for help or guidance in addressing these issues. As Vince Lombardi was often credited saying, "The best defense is a good offense." Employers should get on the front end of work accident claims by putting into action effective preventative measures along with prompt and efficient investigative procedures for those accidents that, even with the best prevention, will inevitably occur.

Preventative Measures

Be Proactive With Safety

Your company should have a published mission statement regarding workplace injuries. Establish a team approach regarding work safety and work injury investigation. To the extent a union is part of the employer's business, every effort should be made to include union participation in this team culture. Stress that the company emphasizes fairness regarding the claim process, but will not tolerate unsafe practices, fraud and malingering. Educate employees on the financial impact that lost time injuries have on the company and how that then adversely affects not only the ability of the company to improve as a whole, but also how it impacts its ability to reward its employees. The most successful companies with the lowest workers' compensation exposure have a zero tolerance toward unsafe practices.

Hiring Process

Hiring should include not only the pre-employment interview process, but also a post-offer, pre-employment fitness for duty examination. The hiring process should confirm that random drug and alcohol testing will be conducted on all employees, but if that is not possible, at least such testing will be conducted on employees who claim to have been injured, given the provisions of Section 11 of the Workers' Compensation Act, as amended in 2011:

> No compensation shall be payable if (i) the employee's intoxication is the proximate cause of the employee's accidental injury or

The accident investigation should be conducted by the employer's own supervisory personnel and be conducted immediately or as soon as possible. Employers should not wait for the investigation to be conducted by the employer's insurance company, third party claims administrator, or a corporate claims representative. The investigation should take place while all of the conditions, circumstances and details are unchanged and remain fresh in everyone's mind.

Copies of all of documentation obtained from such an investigation should be sent promptly to the employer's workers' compensation claims representative (internal or external, insured or self-insured) for review and a determination of compensability. This review also may result in additional investigation (e.g., the taking of a recorded statement with permission from the purportedly injured employee or from others). The claims representative also may request information from the employer, the medical care provider(s) or other entities.

Determine Compensability Within 14 Days

A determination of compensability must be made within 14 days of the alleged accident to prevent the employer from having to rebut a presumption of compensability under the Act and face possible penalties. *(See Chapter 7 for a discussion of potential employer penalties under the Act.)*

Sources for the information provided in Chapter 4

1) Illinois Workers' Compensation Act; 820 ILCS 305; version June, 2011.
2) Illinois Workers' Compensation; by James M. O'Brien; Copyright© 2000 the Illinois Chamber, American Chamber of Commerce Publishers.
3) "Illinois Workers' Compensation Practice," IICLE, 2004. Supp 2006.
4) Illinois Workers' Compensation Manual; Copyright 2008, Illinois Chamber, American Chamber of Commerce Publishers
5) Illinois Workers' Compensation Manual; Copyright 2012, Illinois Chamber, American Chamber of Commerce Publishers

Chapter 5

Medical Benefits and Employer Tools

Employer Responsibility to Provide Medical Care

The furnishing of medical treatment does not mean that the employer has admitted liability nor is it to be construed at the outset as the payment of compensation. Therefore, employers should initially respond to an injury with the necessary first aid and treatment required for the immediate well-being of the employee.

Once the immediate situation has been addressed and the employer has conducted a thorough investigation into the event and has determined that the illness or injury is work-related, then the employer is obligated pursuant to Section 8(a) of the Act to provide the following:

- All first aid, medical and surgical services that are reasonable and necessary to cure or relieve the effects of the injury or disease.
- In some instances, payment for treatment, instruction and training necessary for physical, mental and vocational rehabilitation, including all maintenance costs and expenses incidental thereto, if warranted.
- If applicable, artificial limbs, eyes and/or teeth, where the loss is a result of a compensable injury including the maintenance or replacement of these items during the life of the employee. Glasses or contact lenses damaged in an accident must be repaired or replaced if the accident results in physical injury to the employee.

The costs of medical services provided by employers are now dictated by a fee schedule. Illinois employers also have the option to use utilization review to determine if the proposed medical service is reasonable and necessary. An employer can deny requested medical treatment because the treatment is excessive or unnecessary based on a valid UR report. Another option is a preferred provider program (PPP), if applicable, which allows employers to better control medical benefits for workers' compensation.

Employee Choice of Physician

The Illinois Act allows an employee a choice of any two doctors and a chain of referrals within each of those choices for any one injury. Emergency treatment and initial referral by the employer to the company clinic do not count toward this limitation. The employer is also responsible for payment of emergency treat-

tion, training and occupation; and whether the claimant has sufficient skills to obtain employment without further training or education. Other factors that can be considered include the relative costs and benefits to be derived from the program, the employee's age, and the employee's ability and motivation to undertake the program and the employee's prospects for recovering work capacity.

Section 7110.10 of the Rules Governing Practice before the Illinois Workers' Compensation Commission provides that the employer and employee prepare a written assessment of the course of medical care and, if appropriate, rehabilitation required to return the injured employee to employment when it can be reasonably determined that the injured employee will, as a result of the work injury, be unable to resume the regular duties in which he/she was engaged at the time of injury, or when the period of total incapacity for work exceeds 120 continuous days, whichever occurs first.

If a dispute relating to vocational rehabilitation arises, the employee or employer may petition the Illinois Workers' Compensation Commission to decide any dispute, including whether the employer is required to provide payment for the vocational rehabilitation program.

Maintenance Benefits

Maintenance benefits are paid while an employee is involved in vocational rehabilitation. Maintenance benefits are paid at the same rate as temporary total disability benefits (TTD), which is two-thirds of the average weekly wage up to the statutory maximum. These, too, are discussed in Chapter 6.

Sources for information provided in Chapter 5

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Chapter 6
Indemnity Benefits

Indemnity benefits are disability benefits and include two basic categories: temporary disability and for permanent disability, including disfigurement benefits. The rates for which these benefits are paid are established by the average weekly wage (AWW) of the employee as determined by Section 10 of the Act and relevant case law. A discussion on how average weekly wage is determined is appropriate at this point.

Average Weekly Wage Calculation

Section 10 of the Illinois Workers Compensation Act

Section 10 of the Illinois Workers' Compensation Act provides four different methods for calculation of average weekly wage, depending on the length of the employee's employment and whether the employee worked full time prior to the date of accident:

- If an employee has worked for at least 52 weeks full time prior to the date of accident, the average weekly wage is calculated by taking his or her "actual earnings" during the 52-week period preceding the date of injury, illness, or disablement, divided by 52 weeks;
- If the employee lost five or more calendar days during that 52-week period, "whether or not in the same week," then the employee's earnings are divided not by 52, but by "the number of weeks and parts thereof remaining after the time so lost has been deducted;"
- If the employee's employment began during the 52-week period, the earnings during employment are divided by "the number of weeks and parts thereof during which the employee actually earned wages;"
- Finally, if the employment has been of short duration or if the terms of the employment were of such a casual nature that it is "impractical" to use one of the three above methods to calculate average weekly wage, regard shall be had to the average weekly amount which during the 52 weeks previous to the injury, illness or disablement was being or would have been earned by a person in the same grade employed at the same work for each of such 52 weeks for the same number of hours per week by the same employer.

Payments to the Rate Adjustment Fund are halted if the Fund is above $5 million. The assessment is cut in half if the Fund balance is greater than $4 million. Payments restart when the fund falls below $3,000,000. Any employer, after reasonable notice and hearing, which willfully and knowingly fails to pay the proper amounts in the Rate Adjustment Fund is required to pay a penalty of 20 percent of the amount required to be paid or $2,500, whichever is greater, for each year or partial year of such failure to pay.

Sources for information provided in Chapter 6

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Chapter 7

Penalties and Civil Liability for Employers

Employer Penalties

When there exists a delay or outright failure to pay either medical benefits or temporary compensation benefits to an employee, the Commission may award additional compensation to the injured employee under certain provisions under the Act. The arbitrators, commissioners and attorneys practicing with the workers' compensation bar have called this additional compensation "penalties." In addition, under certain circumstances the Commission may require an employer to pay the injured employee's attorney's fees. An employer or claims adjuster may receive a letter from defense counsel indicating that the employer may be subject to pay "penalties and attorney's fees" if the case proceeds to trial. This section generally explores the various types of penalties to which an employer may be exposed and the types of defenses employers have against them. It also briefly discusses other ways an employer can be penalized for failing to comply with the Act.

Section 19(l) Penalties

When an injured employee makes a written demand for payment of medical or temporary disability benefits, Section 19(l) provides that the employer or insurance carrier has 14 days from receipt of the demand to inform the employee, in writing, of the basis for either refusing to pay or delaying payment of said benefits. When demand for payment of medical benefits is involved, the employer's 14-day duty to respond does not begin until the expiration of the 30-day pay requirement provided in Section 8.2(d) of the Act. Section 8.2(d) requires employers to pay medical bills submitted from an injured employee's treatment provider within 30 days for treatment rendered on or after September 1, 2011, provided said bills have substantially all the data elements necessary to process the bill. (This requirement was previously 60 days for treatment rendered prior to September 1, 2011). If the bill is not paid within that period, interest accrues at the rate of 1 percent per month payable to the provider.

When the employee can show that the employer or its insurance carrier unreasonably delayed or denied payment of medical and temporary disability compensation, without good and just cause shown by the employer, then the Commission shall assess the employer an additional $30 for each day of the delay, subject to a maximum of $10,000. Where there is a delay of 14 days or more

Sources for information provided in Chapter 7

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Chapter 8

Creating an Environment that Avoids and Minimizes Claims

The best way for an employer to control its workers' compensation costs is to prevent accidents. That is why many Illinois employers have safety and accident prevention programs and policies in place. Unfortunately, workplace accidents inevitably occur. When an accident does occur it does not necessarily mean that the injured employee needs to or will file a claim with the Workers' Compensation Commission. Just as an employer strives to prevent accidents, an employer should equally strive to prevent the need of the employee to file a workers' compensation claim. Creating an environment that does not motivate an employee to file a claim with the Commission should be an integral part of any employer's safety, risk management, and workers' compensation claim program.

Self-Evaluation by Employers

An employer's reputation as to how it handles claimed accidents often identifies the symptoms, or lack thereof, with the employer's workers' compensation policies and procedures. Employers with a reputation of either not paying sufficient attention to their workers' compensation program or not having an effective process in place typically have more systemic issues with claims that those employers with reputations of being proactive and fair in how they handle claims.

Systemic identifiers of an ineffective workers' compensation program may include any of the following:

- Accidents are not investigated properly and promptly.
- Work accident compensability is misunderstood.
- Communication with the injured employee regarding disability and treatment is inaccurate, insufficient, contentious or simply non-existent.
- Injured employees remain off work indefinitely with no effort to return employees to work.
- The injured employee retains an attorney as automatically as seeking medical treatment, sometimes even before seeking medical treatment.
- Claims are settled routinely for a significant dollar amount instead of being settled for a mutually fair figure or being selectively tried based upon effective available evidence.

Chapter 9
Employers and Claims Management

Now that the workers' compensation claim has officially been filed, either simply with the employer's third-party claims administrator or with the Illinois Workers' Compensation Commission or both, the employer still plays a role in the handling of the claim. The employer should still be fully involved in the handling of the claim, although the extent of the involvement may be limited by the employer's agreement with its workers' compensation insurer agreement. In this chapter, we will discuss some of the tactical items used in the handling of an active workers' compensation claim and the employer's involvement in the claims handling process. We'll conclude the chapter with an overview of how the Illinois Worker's Compensation Commission system is designed to handle claims, highlighting points of which all employers should be aware.

Practical Considerations for Employers

The employer's role in claims administration continues while the claim is active, meaning while the injured employee is off work and under medical care. The employer should take an active role in monitoring the employee's treatment and progress, and in obtaining and communicating information regarding the employee's condition and disability. Much of the claims administration and management of the claim will be handled by employers' insurers and/or claims administrators, but throughout the handling of these claims by those claims professionals, employers should still consider themselves having and participate in an active role in this whole process.

Medical Reports

After receiving the treating physician's initial medical report, the employer should continue to pay close attention to and require the continuing submission of medical treatment reports from the employee's treating physician(s). The employee's responsibility to provide follow-up treatment reports from his or her chosen treating physician(s) continues as long as his or her disability and medical treatment continue. Should the employee and chosen physician(s) fail to provide such reports, the employer or the employer's representative should submit a written request to the employee or the employee's attorney for such reports. An additional measure that can be pursued is to submit, as previously discussed, a written request under Section 8(a) of the Workers' Compensation Act to the treating physician(s) for continuing medical treatment reports.

Sources for information provided in Chapter 9

1) Illinois Workers' Compensation Act; 820 ILCS 305; version June, 2011.
2) Illinois Workers' Compensation; by James M. O'Brien; Copyright© 2000 the Illinois Chamber, American Chamber of Commerce Publishers.
3) "Illinois Workers' Compensation Practice," IICLE, 2004. Supp 2006.
4) Illinois Workers' Compensation Manual; Copyright 2008, Illinois Chamber, American Chamber of Commerce Publishers
5) Illinois Workers' Compensation Manual; Copyright 2012, Illinois Chamber, American Chamber of Commerce Publishers

Chapter 10
Subrogation Rights and Other Topics

Now that the workers' compensation claim has officially been filed, either simply with the employer's third-party claims administrator or with the Illinois Workers' Compensation Commission or both, the employer still plays a role in the handling of the claim. The employer should still be fully involved in the handling of the claim, although the extent of the involvement may be limited by the employer's agreement with its workers' compensation insurer agreement. In this chapter, we will discuss some of the tactical items used in the handling of an active workers' compensation claim and the employer's involvement in the claims handling process. We'll conclude the chapter with an overview of how the Illinois Worker's Compensation Commission system is designed to handle claims, highlighting points of which all employers should be aware.

Reimbursement Right Under Third Party Action – Section 5

When the Workers' Compensation Act was enacted almost 100 years ago, one of the main employer objections to the Act was that it created new liability upon employers not known at common law. At common law, employers had no liability to the injured employer if the fault of the accident was a result of the actions of a third party. Examples of those kinds of third party liability actions include automobile accidents, slip and falls, and product liability actions. The legislative bargain for payment of workers' compensation benefits, even if the fault is that of a third person, is that the employer receives a reimbursement right that is unique and substantial. Illinois courts have consistently sustained the primacy of the employer's reimbursement rights over the years.

The reimbursement right is expressed in two alternate ways. If the injured employee brings the civil suit, then the employer has a lien against any recovery or judgment that the employer receives from the third party. If the employer knows the name of the third person and its insurance carrier, the employer or its workers' compensation carrier should serve that third person and its carrier with a lien notice. Any third party with actual or constructive notice of the lien has a duty to protect the workers' compensation lien.

The employer and its carrier also have the right to file a Petition to Intervene in the civil action so that all dispositive orders of the court are made for the employer's protection. The Petition to Intervene performs a number of functions including providing notice to all civil parties and their carriers of the employer's

25. Before the accident, did the employee ever have any problems with the injured body part (s)? Yes ____ No____
26. Are you aware of any outside activities of the employee that might have contributed to or be affected by this injury? Yes____ No ____
27. Describe what other information regarding this employee, accident or injury which might be helpful in this investigation:_____

_____

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Supervisor:_____ Date:_____

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