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EMPLOYERS' GUIDE:

NEW JERSEY WORKERS' COMPENSATION CLAIMS/ISSUES

THE BASICS

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AN OVERVIEW OF NEW JERSEY WORKERS' COMPENSATION LAWS/ISSUES

I. BACKGROUND/INTRODUCTION

- A.** The New Jersey Workers' Compensation Law is remedial social legislation that should be given liberal construction in order to achieve its beneficent intentions. *Cruz v. Central Jersey Landscaping, Inc.*, 947 A.2d 1228 (2008).
- B.** The workers' compensation system is designed provide a dependable level of compensation during a period of disability. *Id.*
- C.** To that end, New Jersey awards compensation to injured employees regardless of fault, except for certain specifically defined exceptions (i.e., an intentional injury). N.J.S.A. §§ 34:15-1; and 34:15-2.
- D.** However, the workers' compensation remedy is exclusive in nature, which means that an injured employee may not bring a civil action against her employer. N.J.S.A. § 34:15-1.
- E.** Generally speaking, there is a twenty percent cap on a petitioner's attorney fees, of which the employer will be responsible to pay for sixty percent, unless the case is a Section 20 settlement and the employer will not be required to pay for any percentage of the attorney fees. N.J.S.A. § 34:15-15-64(a); and N.J.S.A. § 34:15-15-20.
- F.** Petitioners may recover for the following benefits only: (1) medical benefits; (2) temporary disability benefits; and (3) permanent disability benefits. N.J.S.A. §§ 34:15-15; 34:15-38; and 34:15-12(b).

1. Temporary Disability Benefits:

- a.** These are payable after 7 days of lost time (not necessarily consecutive). This is the "waiting period". N.J.S.A. 34:15-14. Once the waiting period expires, the 7 days of time lost during that period is compensable too.
- b.** Temporary Disability Benefits are payable up to (but no more than) 400 weeks.
- c.** Temporary Disability Benefits end at MMI. Once MMI is reached, Temporary Disability Benefits end whether the employee returns to work¹. Monaco v. Albert Maund,

¹ Or attending college full time. Tamecki v. Johns Mandel, 125 N.J. Super. 355 (1973).

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Inc., 17 N.J. Super. 425 (1952).

2. Light Duty/Transitional Duty:
 - a. If an employer offers a light duty job to the employee, they terminate Temporary Disability Benefits. If the employee rejects it, we can still terminate. Harbatuk v. S&S Furniture Systems Installation, 211 N.J. Super. 614 (1986).
3. Permanent Disability Benefits:
 - a. Partial permanent disability is compensated at 6 week per 1%. 10% = 60 weeks.
 - b. Injuries to the trunk, back, neck, hip, shoulders, head and psyche are permanent partial disabilities.
 - c. Scheduled losses involve the leg, arm, foot, hand, eyes, hearing, fingers and toes.
 - d. With multiple injuries, add the weeks, not the percentages. Although New Jersey awards are "stacked" and an accident with multiple, a good practical argument on lack of a demonstrable loss can help reduce the total number of weeks that go into the permanency award. Ventre v. CPC, International, 285 N.J. Super. 567 (1995).
 - e. For practical proof of permanent loss, an employee must demonstrate the following two points:
 - i. Again, demonstrative objective medical evidence of a functional restriction of a body, its members or organs; plus
 - ii. Either a lessening to a material degree of working ability, or if not, whether there has been a disability in the broader sense of impairment in carrying on the ordinary pursuits of life. (*Range of motion alone will not satisfy demonstrable objective medical evidence. You need more.) Colon v.

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Coordinated Transport, Inc., 141 N.J. 1 (1995).

- iii. Point of practice: when a career change or loss is presented versus an opportunity to return to the same career, the permanency award is going to be arguably higher. But further, given the same injury.

G. Finally, there are two types of compensable injuries: (1) traumatic (i.e., a herniated disc from a slip and fall); and (2) occupational (i.e., carpal tunnel syndrome from repetitive typing). N.J.S.A. §§ 34:15-7; and 34:15-31.

II. KEY EMPLOYER ISSUES

A. New Jersey Employers/Insurers Control Medical Care;

1. This is done through authorization for treatment.
2. During authorized treatment, if the injured worker is unable to perform work activity/has work restrictions, then the employee is entitled to temporary disability payments (wage benefits).
3. Medical treatment continues until maximum improvement (øMMIö) is achieved.
4. Recommendations on continued treatment:
 - (1) When treatment personnel (doctors, therapists, etc.) make additional recommendations for treatment, arrange an independent medical exam to determine the necessity of that treatment. If once the treatment is completed an MMI is achieved, stop temporary disability payments.
5. If the employee disagrees, expect a Motion to Compel Temporary Disability/ Medical Treatment.

B. Re-Openers: Seeking Additional Payments if Filed within Two Years of the Last Payment of Compensation. N.J.S.A. 34:15-27. Otherwise Known as Re-Opener

1. If there is a change in the extent of incapacity then the claimant/employee can seek additional compensation if they can show that the increased incapacity is related to the same accident. It doesn't have to be the same body part, it just has to be related to the original settled accident. Yeomans v. City of Jersey City, 27 N.J. 496 (1958).

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C. Reducing Awards - Sought by Employers

1. On occasion (generally in total disability situations) the employer might challenge to reduce an award of benefits. The standard is very high. Kiessling v. Prudential Insurance Company, #A-3051-08T2 (A.D. 2010). An employer would have to show an ability to perform long periods of activity and that the improvement could mean a return to the workforce.

D. Calculating Wage Benefits and Indemnity Awards

1. There are two types of payments. Temporary Disability Benefits and Permanency Benefits.
2. Temporary Disability Benefits.
 - a. Generally, there is a 26 week gross wage average for the employer responsible for the injury. See, e.g. Engelbretson v. American Stores, 49 N.J. Super. 19 (1957); Russell v. Saddlebrook Restaurant, 199 N.J. Super. 186 (1985).
 - b. To calculate the average weekly wage.
 - i. We pay 70% of the average gross weekly wage. N.J.S.A. §34:15-12.
 - c. Temporary disability rates/permanent weekly rates.
 - ii. These vary from year to year and are set forth in a schedule published each year.
 - d. Temporary Disability Benefits are payable during a period where the employee is disabled/unable to perform his/her job activities after a work injury.
3. Permanent Disability Benefits/Permanency requires both objective medical evidence of an injury plus either a lessening to a material degree of working ability or if there is no impact on work, then a substantial impairment of non-work activities. (This is generally measured in a percentage format assigned to the limitation by claimant's and employer's/defendant's positions).

E. The Aggravation/Exacerbation of Prior Injuries

1. The key here is there objective evidence of a worsening or change.

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Kozinskiy v. Edison Products Company, 222 N.J. Super. 530 (1988).

2. This is important for two reasons:
 - a. First, an employer takes their employee as they find them with all the preexisting disease and infirmity that may exist. Verge v. County of Morris, 272 N.J. Super. 118 (1994). Thus, if the problem manifests while in your employ, the most likely you are going to be held responsible for all/the lion's share of any percentage liability.
 - b. It is important to establish that perhaps another employer (through the use of objective evidence) had some liability for the risk/loss.
 - i. Specifically to occupational losses/claims, the general rule is that the last on the risk/first manifestation is liable for compensation. Bond v. Rose Ribbon and Carbon Manufacturing Company, 42 N.J. 308 (1964).
 - ii. That doesn't cut off claims against prior/subsequent employers, it just sets a bright line rule that the last employer pays most or all.

F. Psychiatric Claims

1. Psychiatric claims require the following:
 - a. Analysis of the subjective statement of the patient;
 - b. Observations of physical manifestation of the symptoms related in the subject of statement; and/or
 - c. Observations of manifestations of physical symptoms and analysis of descriptions of state of mind beyond those related in the patient subjective statement. See Saunders v. E.I. DuPont Company, 102 N.J. 402 (1986); and N.J.S.A. 34:15-36.

G. Permanent Disability

1. The total disability award is 450 weeks (partial is 600 = 100% x 6).

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2. The total disability is a claim for a lifetime award.
3. It can mean physical or neuropsychiatric total impairment where no fundamental or marked improvement in the condition can be reasonably expected.
4. Those with a disability of 75% or higher can be permanently disabled under the "Odd-Lot Doctrine". The 75% disability, combined with age, education, intelligence, training, communication skills and other personal or cultural deficits are combined to make someone virtually unemployable.
5. Ultimately, in "Odd-Lot Doctrine" cases, once the claim is made of total disability, it's the employer's burden to show that work within the employee's physical capacity is actually obtainable. (*If the Odd-Lot Doctrine might be an issue, the employer is required to advance notice in order to present opposing proofs).

H. The Bonafide Offer

1. In order to avoid paying attorney's fees, the employer can make a bonafide offer/permanency award within 26 weeks of the injury or last hands-on treatment. N.J.S.A. 34:15-64; Kaufman v. Clifton Board of Education, #A-1209-00T5 (2001).
2. Point of practice.
 - a. Generally, when injured employees get bonafide offers, they hire lawyers.
3. What's necessary for successful bonafide offer?
 - a. Its timely (within 26 weeks);
 - b. A letter explains that the weekly payments are meant to be a bonafide offer of permanent disability; and
 - c. It makes clear that the respondent will arrange an examination promptly and adjust the amount and percentage following that

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examination.

- d. It should also be based on an independent medical exam evaluation.
4. Bonafide offers make a lot of sense in cases where a permanent injury is expected. It protects the employer from paying a counsel fee on any portion of a permanency award that was covered by a bonafide offer. e.g. 10% bonafide offer. 15% permanency finding. Employer is only responsible for the attorney's fee (generally 60%) of the extra 5%.

I. The Abdullah Credit

1. The most important credit that entitles the employer to a credit for prior work or non-work disability in a percentage paid at the rate in effect when the claimant receives the current award. Abdulloah v. S.D. Thomas, Inc., 190 N.J. Super. 26 (1983).
2. The employer pays the current dollar value of the old injury or prior disability plus the effects of the new injury before calculating the credit. E.g.: 2001 award of 20% of the net followed by a 2010 award of 40% of the neck = 60% overall minus a credit of the 2001 rates of 20%.
3. Point of practice: make sure dollar credits on bonafide offers are reflected on page 2 of an Order approving settlement.

J. Section 20 Settlements

1. Section 20 Settlements are generally in weak and defensible cases are technically a dismissal without the right to re-open the case under any circumstances. A Section 20 Settlement is limited to the following four situations:
 - a. An issue of Jurisdiction;
 - b. An issue of liability;
 - c. An issue of causal relationship; and
 - d. An issue of dependency.

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III. REPORTING REQUIREMENTS

A. Employee's Initial Filing\Statute of Limitations

1. The employee must file his claim petition within two years of the traumatic incident, and/or within two years that she suffered a compensable occupational injury. N.J.S.A. §§ 34:15-34; and 34:15-51.
2. The dependency claim petition (on behalf of a dependent of a deceased employee) must be filed within two years of the traumatic incident, and/or within two years after becoming aware of a compensable occupational injury. N.J.S.A. §§ 34:15-34; and 34:15-51.
3. The employee must file an application for review of modification of formal award (when there has been a prior recovery), if there has been an increase of the prior injury, within two years after receipt of the last payment. N.J.S.A. § 34:15-27.

B. Employer's Answer

1. The employer must file its answer to the claim petition within thirty days after service of the petition. N.J.S.A. § 34:15-52.
2. The employer must file its answer to a dependency claim petition within thirty days after service of the petition. N.J.S.A. § 34:15-52.
3. The employer must file its answer to the application for review of modification of formal award within thirty days of service of the application. N.J.S.A. § 34:15-52.

C. Burden of Proof

1. The burden of proof for a traumatic accident is initially on the employee to establish that the injury occurred during the course of employment, though the burden is not as great as in a civil action. *Brunnell v. Wildwood Crest Police Department*, 822 A.2d 576 (2003).

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2. With regard to an occupational exposure claim, the petitioner must establish that his injury was caused by the unique conditions peculiar to his place of employment. *Id.*

D. Notice Requirements

1. There is no notice requirement on an employee with regard to occupational claims.
2. However, the employer must have knowledge of an injury caused by a traumatic incident.
 - a. If the employer is not aware of an injury and the employee does not give notice within fourteen days of its occurrence, then the employer owes no compensation until it receives such notice. N.J.S.A. § 34:15-17.
 - b. If notice of an injury is given within thirty days of its occurrence, then the employer must pay benefits, unless it can show that it was prejudiced by the delay. N.J.S.A. § 34:15-17.
 - c. If notice is given within ninety days, then the employee must present a reasonable excuse for the delay in order to obtain benefits, unless the employer can demonstrate that it was prejudiced by the delay. N.J.S.A. § 34:15-17.
 - d. If the employee does not give notice within ninety days of the occurrence of the injury, then she is not entitled to any compensation. N.J.S.A. § 34:15-17.

E. Standard Motions

1. Motions for Temporary and/or Medical Benefits
 - a. Employees may file a motion for temporary and/or medical, which initiates a strict set of deadlines with which to comply. N.J.A.C. § 12:235-3.2.
 - b. The employee must file the motion in the district office

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where the case is assigned and serve a copy on the employer by certified mail or personal service. N.J.A.C. § 12:235-3.2(a).

- c. Thereafter, the employer must file an answer within twenty-one days after service of the motion. N.J.A.C. § 12:235-3.2©.
- d. Upon receipt of the motion, the Division of Workersø Compensation must schedule a hearing within thirty days of the filing of the motion. N.J.A.C. § 12:235-3.2(d).
- e. The employer must schedule and complete an independent medical examination within thirty-days of receipt of the motion, and the report must be issued within thirty-five days from receipt of the motion. N.J.A.C. § 12:235-3.2(g).
- f. The employer must schedule and complete an independent medical examination within thirty-days of receipt of the motion, and the report must be issued within thirty-five days from receipt of the motion. N.J.A.C. § 12:235-3.2(g).

2. Motions to Dismiss for Lack of Prosecution

- a. Employers may file a motion to dismiss for lack of prosecution when the employee has failed to prosecute his claim (i.e., attend independent medical examinations, or respond to discovery). N.J.S.A. § 34:15-54.

3. Other Motions

- a. There are other standard motions, like motions to compel discovery that are typically utilized and can lay the groundwork for filing a motion to dismiss for lack of prosecution. N.J.A.C. § 12:235-3.5.

IV. SETTLEMENT

- 1. A claim may reach a standard settlement or a Section 20 settlement.

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2. A Section 20 settlement occurs when there is a genuine dispute regarding jurisdiction, liability, causal relationship, or dependency. N.J.S.A. § 34:15-20.
3. Both forms of settlement must be brought before a Judge of Compensation for approval, and are not valid or binding unless they have been so approved. N.J.S.A. §§ 34:15-22; and 34:15-20.

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