

2024 Workers'
Compensation
Conference

INTRODUCTION TO WORKERS'
COMPENSATION LAW

SUBSTANTIVE ASPECTS
OF WORKERS' COMPENSATION

Hon. Todd Seelig
WC Judge, Philadelphia, PA
Adjunct Professor, Villanova Law
School

Why do we need Workers' Compensation?



Why do we need Workers' Compensation?

- 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.



Why do we need workers' compensation?

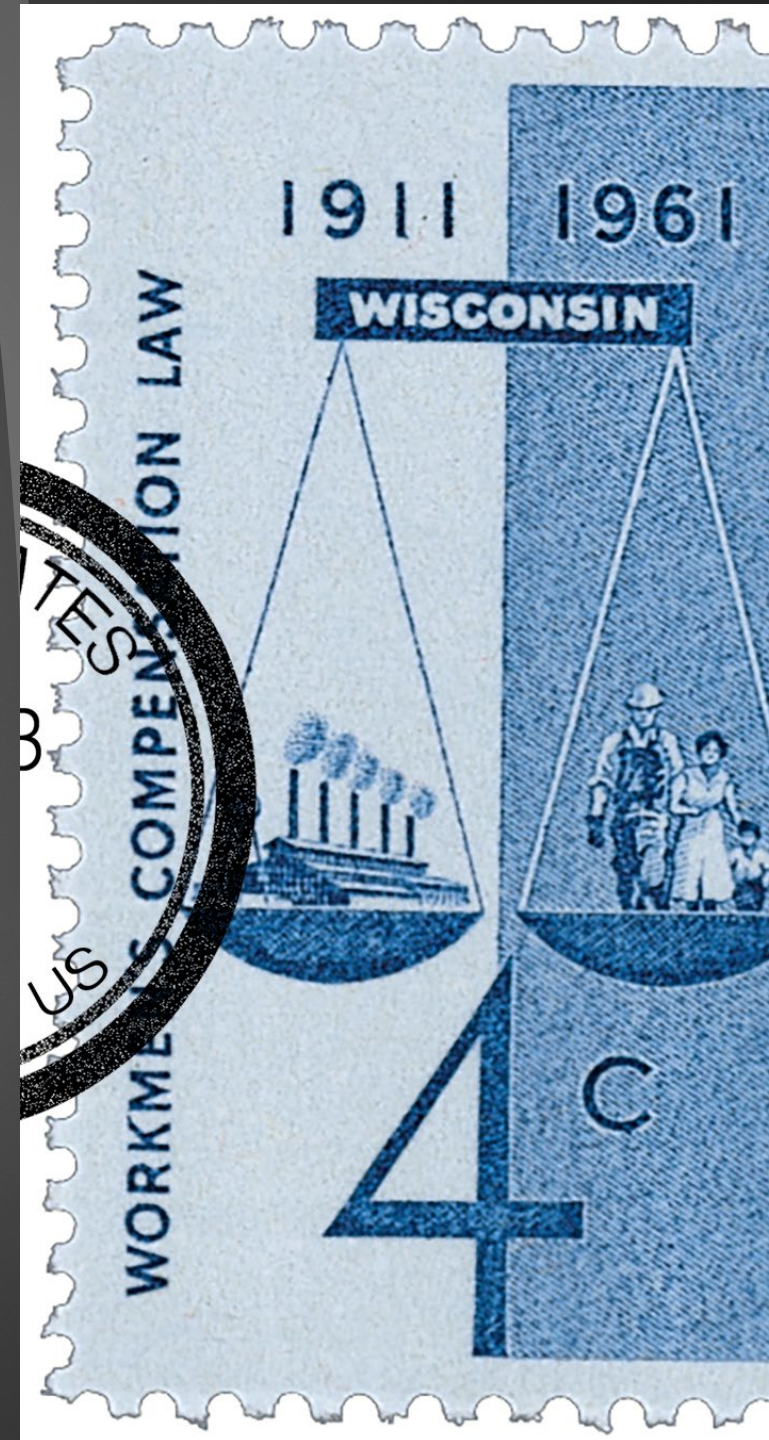
Why do we need workers' compensation?

- **Late 19th Century: Machinery Primitive and safety not as much of a concern**
- **Between 1890 and 1917, there were 230,000 on-the-job deaths of railroad employees in this country.**
- **On the railroad, that comes to about 8,200 per year during that period, or 23 each day.**
- **Common Law As applied to WC: Very difficult to recover to prove negligence and affirmative defenses: Fellow Servant, Assumption of Risk, Contributory Negligence**

History of workers' compensation

History

- European origins: Workmen's Compensation Act of 1897 (Great Britain) hazardous employments
- America: Federal Legislation: FELA is a federal law enacted in 1908 railroad workers
- 1st Workers' Compensation Law in U.S.: Wisconsin 1911
- Original PA Act of 1915 (Centennial was: June 2, 2015)
- Occupational diseases added: 1937, 1939



History of workers' compensation

- Pirates invented comp?

For example, Captain Morgan (yes, the Captain Morgan) would pay his men in pieces of eight (Spanish dollars) for losing the following body parts:

600 pieces for the right arm

500 pieces for the left arm

500 pieces for the right leg

400 pieces for the left leg



Introduction to Workers' Compensation

WORKERS' COMPENSATION:

“THE GREAT COMPROMISE”



Introduction to Workers' Compensation

“THE GREAT COMPROMISE”

Injured Employee receives:

- No-Fault liability
- Speedy Recovery

Employer:

- Workers' Compensation is employee's exclusive remedy for an injury and employer's exclusive liability (limited damages for which you can buy insurance). Worker cannot sue Employer.

Why do we need Workers' Compensation Case

Basic Principle: fault on the part of either Employer or Employee is irrelevant and compensation is made payable according to a prescribed and limited scheme

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**

Pennsylvania WC Act

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, settlements)
- d. 2006 (Act 147: procedure)
- e. 2018 (Act 111: IRE re-instated)

Elements to Prove entitled to Workers' Comp

**1st element: YOU MUST BE AN
EMPLOYEE**

**(not independent contractor,
volunteer)**

Are you an employee or independent contractor?

- ▶ Extent of control by Employer of details of work;
- ▶ Distinct Occupation;
- ▶ Skill required in the particular occupation;
- ▶ Who supplies the tools;
- ▶ Length of time for which the person is employed;
- ▶ Method of payment (by the time or by the job);
- ▶ Is work part of the regular business of the employer
- ▶ Whether or not the parties believe they are creating the relationship of master and servant.

Restatement (First) of Agency § 220 (1933)

STATUTORY EXCLUSIONS



- **Minimum Number of Employees: 1/3 of states have rule (between 3-5). PA = 1 employee**
- **Illegal Employments (undocumented worker) NOT A BAR IN PA and MOST STATES**
- **Agricultural and Farm Employments (minimum test pay one ee \$1,200 a year or one ee worked 30 days or more in calendar year)**
- **Domestic Employments: Home Workers (caretaker of parent?)**
- **Executive officers: may opt out if certain ownership interest**

2ND ELEMENT: MUST SUFFER AN INJURY

Critical Statute: Section 301(c)(1)

Compensable event as “injury,”
not “accident” or personal injury
by accident

Liberal interpretation, 1972-1987

**INCLUDES “AGGRAVATION OF
PRE-EXISTING Condition”**

”EGGSHELL PLAINITFF”: Employer
takes Employee as they find
them



Injury includes Occupational Diseases

Diseases which experience has shown to be related to work exposures

- (1) hepatitis from exposure to blood borne pathogens,
- (2) anthrax from handling animal hides
- (3) byssinosis from working with cotton
- (4) Black Lung (coal worker's pneumoconiosis) from coal dust inhalation,
- (5) silicosis from working in steel mills.
- (6) There are 17 specific "occupational diseases" enumerated in Section 108 of the Pennsylvania WC Act. For these enumerated diseases, there is a presumption that the disease arose out of and in the course of one's employment if evidence shows substantially greater incidence of disease in that industry or occupation than in the general population.

Mental Stress Claims

**Compensability of mental stress cases:
MUST PROVE ADDITIONAL ELEMENT:
abnormal working condition if mental
stress causes disability**

**Examples: mental stress due to being
held at gun point during store robbery is
abnormal working condition**

**Examples: mental stress of truck driver
from truck overheating and truck
catching on fire NOT ABNORMAL**



3RD Element:
Within course
and scope of
employment

Meaning of “within course and scope”
(What was the employee doing at the time
of the injury and where was it being done).

Broader than “doing work” at time of injury

On Premises injuries: Almost always
compensable unless major departure:
inconsequential or innocent departures
from work during regular working hours not
excluded

Personal Comfort Doctrine: employ does
not stray from the course of employment for
a momentary departure from active work to
attend to some ‘personal comfort’ such as
using the restroom, eating, fixing one’s hair,
or changing contact lenses or make-up.

What is on the Premises? Egress/ingress of Employer

Once employee reaches
Ingress/egress of employer's
premises they are covered
under comp. "threshold"

Parking lot cases: owned or
maintained by Employer



Going and Coming Rule (not covered)



Coming home or going to work NOT COVERED

- * Exception: Traveling employees
- * Exception: Contract includes travel
- * Exception: Special Mission
- * Exception: Special Circumstances
Issue: Telecommuting Employees

Defenses?

Proved (employee, injury,
within course and scope)

1. Defense: Violation of Law
2. Defense: Intoxication
3. Defense: "Reasons personal"
4. Defense: Violation of positive orders
5. Defense: Intentional self-infliction



What benefits does employee receive?



MEDICAL BENEFITS



WAGE LOSS BENEFITS

How much wage loss (2/3 of AWW)

Basis/Form/Amount/Period
TTD Benefit Rate:

1. Maximum for 2024: \$1,325.00 (SAWW)
2. Three formulas:
 - a. $\frac{2}{3}$ of AWW
 - b. $\frac{1}{2}$ of SAWW (fixed)
 - c. 90% of AWW

(refer to the L & I website

[https://www.dli.pa.gov/Businesses/Compensation/WC/claims/Pages/Statewide-Average-Weekly-Wage-\(SAWW\).aspx](https://www.dli.pa.gov/Businesses/Compensation/WC/claims/Pages/Statewide-Average-Weekly-Wage-(SAWW).aspx)

How long can you receive workers' compensation?

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

How long can you receive workers' compensation?

4 ways to stop or cap workers' compensation

- Full Recovery: Termination
- Job offer/earning power assessment at same wages as pre-injury job (Suspension)
- Job offer/earning power assessment of light-duty job at lesser wages: modification
- Impairment rating: after 2 years of TTD benefits if less than 35% of whole body impairment using 6th edition of AMA Guides capped at 500 weeks



**How long can you receive
workers' compensation?**

**Pennsylvania is a Wage Loss
State: Follow the money**

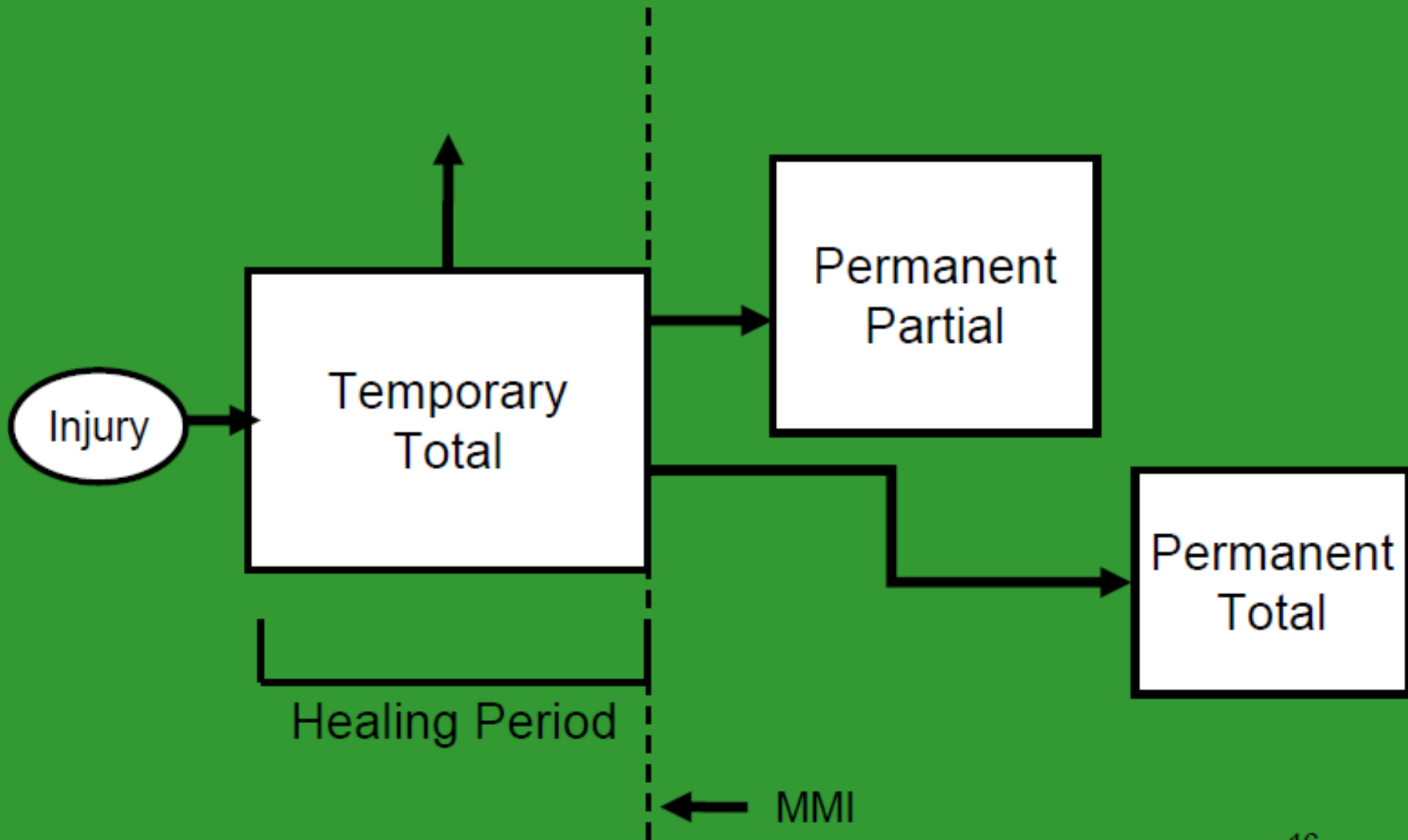
**2/3 of States are Impairment
States (Delaware)**

How long can you receive workers' compensation?

- ▶ Wage loss vs. Impairment State:
- ▶ Severe injury of pinky?



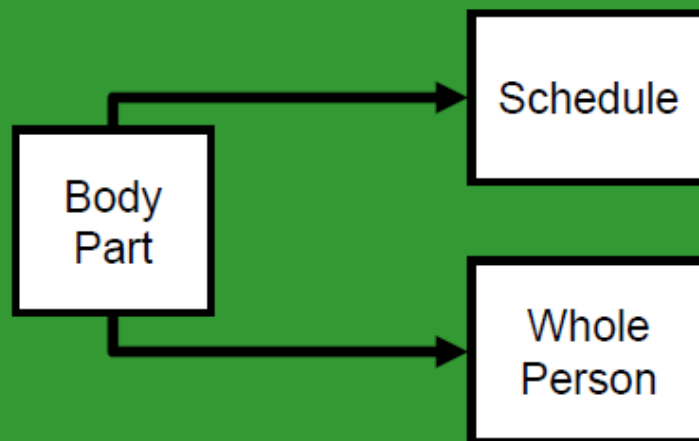
Overview of Disability



Schedules

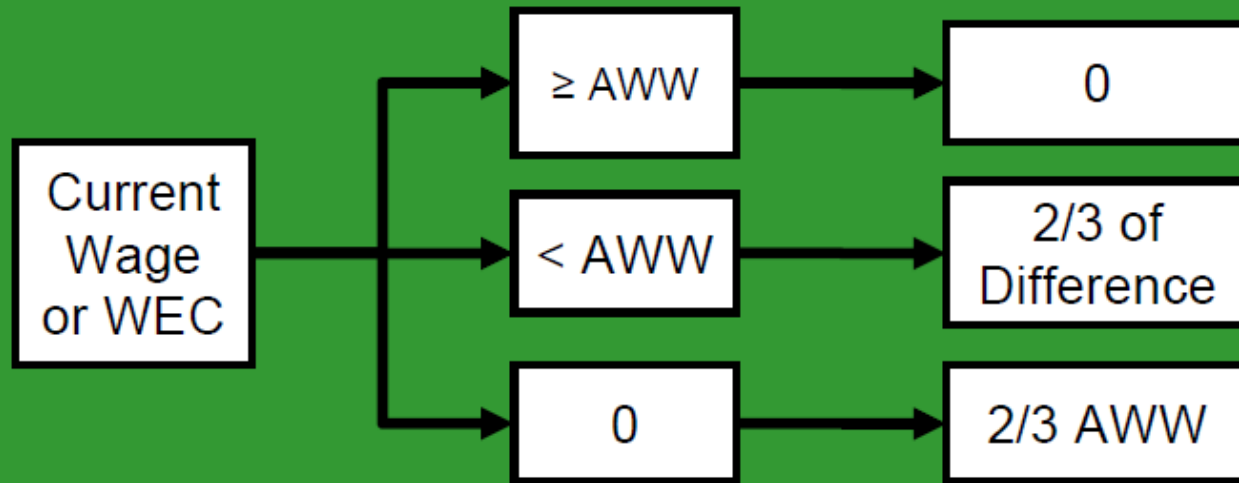
Delaware	
Hand	220 Weeks
Arm	250 Weeks
Foot	160 Weeks
Leg	250 Weeks
Thumb	75 Weeks
First finger	50 Weeks
Second finger	40 Weeks
Third finger	30 Weeks
Fourth finger	20 Weeks
Great toe	40 Weeks
Other toes	15 Weeks
Eye	200 Weeks

Schedule v. Whole Person



	Injury	Rating	Value	Duration	Rate
Mr. A	Hand	30%	220 Weeks	66 Weeks	2/3 AWW
Mr. B	Back (Whole Person)	20%	400 Weeks	80 Weeks	2/3 AWW

Wage-Loss Approach



Impairment State vs. Wage loss State

► Delaware: Maybe 8 weeks then
reached MMI and then 20 weeks

$\$1325 \times 28 \text{ weeks} = \$37,100$



Impairment State vs. Wage loss State

- ▶ Pennsylvania wage loss state \$800,300 ($\1325×604 weeks)



Cannot return to pre-injury job: might receive 11.6 years of comp

Impairment State vs. Wage Loss State



- ▶ Pennsylvania: Once you offer job at same or greater wages wage loss benefits suspended
- ▶ Delaware: \$1325 x 50% of 400 weeks or 200 weeks
- ▶ \$265,000

Medical Benefits

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)



Medical Marijuana

The Science and the Benefits

Relieving Pain • Easing Anxiety • Improving Sleep
Plus: The Many Uses of CBD



Medical Benefits

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



Litigation of a Workers' Compensation Case



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)

Litigation of Workers' Compensation Case

- ▶ 1. File Petition
- ▶ 2. Assigned to Judge (where ee lives)
- ▶ 3. First Hearing set trial schedule
- ▶ 4. 90 days for Moving party to produce medical evidence (doctor deposition)
- ▶ 5. Interim hearing for fact witness deposition
- ▶ 6. 90 das for Responding party to produce medical evidence
- ▶ 7. Closing Hearing
- ▶ 8. Decision (20 days to appeal)



Settlements!!

Compromise Settlement (C&R)

Critical Statute: Section 449 as of 1996

- A. All benefits may be released
- B. Approval by WCJ is required; a hearing is required in every case
- C. Criterion of approval: whether the claimant understands the full legal significance of the settlement



QUESTIONS?

