

BELOW THE RED LINE

HEYL ROYSTER

WORKERS' COMPENSATION UPDATE "WE'VE GOT YOU COVERED!"

A Newsletter for Employers and Claims Professionals

August 2020

A WORD FROM THE PRACTICE CHAIR

That's a wrap on Summer 2020. I don't think any of us will forget how we spent this past Summer. It may not be the stuff that fills up a photo album (Am I showing my age there?), but it will definitely stick with me for the rest of my days. I, for one, am looking forward to a do-over come next Summer. I suppose by now your kids are back to school which may be more correctly stated, back to the kitchen table for virtual learning. I do hope this newsletter finds you safe, healthy, and well-adjusted to schooling at home. We are always thinking about you and are looking forward to getting together virtually throughout the month of September for Heyl Royster's Workers' Compensation webinar series (more on that below).

The Commission continues to operate with the use of the WebEx technology which was implemented a couple of months ago. It is far from perfect, but it does work, and we are getting more proficient with it with each passing day and docket cycle. This means our dockets are virtual, the pre-trial hearings (which are now mandatory) are virtual, and only the trials take place in-person. Also, most of our docket sites, which were closed during the pandemic, have re-opened and trials are taking place – not just at a handful of locations, but at their typical docket locations. This is positive news for everyone. Anytime you can take a step towards normalcy that is a good thing. But, I would be remiss if I did not mention how smooth of a transition our Workers' Compensation Practice Group had going from in-person dockets and meetings to virtual ones. We take great pride in our ability to react and adjust quickly and efficiently to continue providing you with the exceptional service you have come to expect from Heyl Royster and our workers' compensation team.

This month, one of our Summer Law Clerks, Ms. Emma Ray, provided us with some helpful and always timely tips on how to handle amputation cases. When

you are dealing with the loss of a finger and you are not sure what percentage loss of use of the finger is owed, and what statutory rate should be used to pay the injured worker for a statutory loss, this article will point you in the right direction. It is always a good reminder or reference tool to use, as these type of claims may not come up every day. Emma is back at Northern Illinois University and I am sure doing her best to enjoy her 3L year.

Finally, I would like to remind you, if you have not already signed up for our webinar series in September, to please go to our website and look for the banner and sign up for the four offerings. Or please [CLICK HERE](#). There will be a webinar each Thursday during the month of September during the lunch break (12:00 p.m. to 1:00 p.m., CST). Your speakers will be Craig Young, Kevin Luther, Dana Hughes, Lynsey Welch, Brad Antonacci, Jessica Bell, Amber Cameron, and myself. There will be two speakers for each webinar presentation. There will be written materials available, and you will be able to ask questions (via a chat box) as we present so we can make it interactive. Please invite your team and clients as we have plenty of room for everyone!



Toney J. Tomaso
Workers' Compensation Practice Chair
ttomaso@heyloyroyster.com



Heyl Royster Workers' Compensation Webinar Series

9/3

9/10

VISIT OUR WEBSITE
for more information
& to Register!

9/17

9/24

HEYL ROYSTER WORKERS' COMPENSATION UPDATE

August 2020

Editor, Lynsey Welch

NAVIGATING AN AMPUTATION RATE CALCULATION

By: Emma Ray, Rockford Office

Losing an arm, thumb, finger, or possibly even a leg while performing work duties can lead to troubling medical expenses and lost wages, forcing employers to pay disability benefits for a specified period of time. Employers often struggle with how to calculate benefit payments when they are faced with an employee who has suffered an amputation. In such instances, an employer must determine what rate amputations are to be paid at in relation to an employee's average weekly wage. This also leads to some discrepancy when determining the minimum or maximum payments that must be paid to compensate an employee who suffers an amputation. This article will clarify the complex issue surrounding amputation benefits and what rate an employer must pay an injured employee who has suffered an amputation to avoid being subjected to penalties and/or attorney's fees under the Illinois Workers' Compensation Act.

An Employee Suffers an Amputation – Where to Start

A fundamental notion in the workers' compensation realm is that in order for an employee to claim workers' compensation benefits, the injury must arise out of and occur during the course of employment. *Lester v. Industrial Com'n*, 256 Ill. App. 3d 520 (1st Dist. 1993). If no dispute exists as to whether an injury arose out of and in the course of employment, an individual who receives amputation benefits under the Act must be immediately compensated. If an employer otherwise delays payments, he can be subject to penalties under the Act, unless the employer can show he had a reasonable belief that the delay was justified.

Lester, 256 Ill. App. 3d at 524. As an example, you were not provided medical evidence which proved there was an actual amputation, or bone loss to trigger the statutory loss. You have the absolute right to demand such evidence before paying the statutory loss benefits.

Section 8(e) of the Act provides the statutory compensation for amputations by assigning certain body parts a fixed number of weeks an employee can receive PPD payments. 820 ILCS 305/8(e). The maximum number of weeks for compensation correspond with the permanent loss of use of a body part, or in the event of partial loss, a percentage of the maximum number of weeks is used. For example, if an employee suffers 70% loss of use of his thumb, and the statutory payment under section 8(e) is 76 weeks for 100% loss, an employer would take 70% of 76 weeks and thus be required to pay PPD benefits for 53.2 weeks.

In order to determine the value of a "week" of compensation, an employer must determine an employee's average weekly wage. An employee's average weekly wage is determined by (1) ascertaining how much money he actually earned during the 52 weeks preceding his injury, and (2) dividing that amount by 52. Section 10 of the Act gives further clarification and direction for calculating an average weekly wage rate.

How to Compensate an Amputation

Discrepancy arises because employers are unsure how to compensate for amputations, and the Illinois Workers' Compensation Act lacks clear guidance with respect to the exact rate and limitations used for amputation rate calculations. In order to determine the correct compensation for an amputation, employers need to look under section 8(b) of the Act. Section 8(b)(2.1) states in part:

HEYL ROYSTER WORKERS' COMPENSATION UPDATE

August 2020

Editor, Lynsey Welch

The **compensation rate in all cases of serious and permanent disfigurement . . . under paragraph (e) of this Section shall be equal to 60% of the employee's average weekly wage** . . . provided that it shall not be less than 66⅔% of the sum of the Federal minimum wage . . . or the Illinois minimum wage under the Minimum Wage Law, whichever is more, multiplied by 40 hours.

820 ILCS 305/8(b)(2.1).

Nonetheless, the PPD rate equal to 60% of an employee's average weekly wage is subject to the minimum and maximum rate rules under section 8(b)(4). Section 8(b)(4) provides that **the weekly compensation in amputation cases under paragraph (e) of the statute is 133⅓% of the State's average weekly wage**. Section 8(b)(4.1) also provides that **the minimum weekly compensation rate in amputation cases under paragraph (e) shall not be less than 50% of the State's average weekly wage**.

In sum, this means that an individual receiving an award under the Act for temporary total disability, death, permanent total disability, or **amputation or enucleation of an eye under section 8(e)**, is entitled to a compensation rate of 60% of his average weekly wage up to the maximum of 133⅓% of the State's average weekly wage. But, the minimum compensation rate must not be less than 50% of the State's average weekly wage, as stated under section 8(b)(4.1). These minimum and maximum rules provided in the Act are in place so an injured employee is unable to receive PPD benefits greater than his average weekly wage.

Despite the statutory language, some practitioners are still confused on whether amputation benefits are to be paid at a rate of 60% of an employee's average weekly wage, or

at the 66⅔% rate. *Modern Drop Forge Corp. v. Industrial Commission*, 284 Ill. App. 3d 259 (1st Dist. 1996) is an instructive case on this issue. In *Modern Drop Forge Corp.*, the arbitrator awarded benefits using the 60% rate after petitioner suffered an amputation of his right hand. The commissioner then awarded the petitioner permanent disability payments at a rate of 66⅔% of his average weekly wage. The circuit court affirmed the commissioner's decision stating that the "maximum rate available to the petitioner is 66⅔% of his average weekly wage. The appellate court ultimately reversed the commissioner's decision and determined that the proper compensation rate for amputations is 60% of the employee's average weekly wage.

The statutory language provided in the Act, alongside the commissioner's decision in *Modern Drop Forge Corp.*, makes it relatively clear that amputations are to be compensated at 60% of an employee's average weekly wage, subject to the minimum and maximum rates discussed above.

What about TTD payments?

Employers may also start to question whether they need to provide statutory amputation payments under section 8(e) of the Act during the same period for which TTD benefits are being paid. This question was addressed in *Greene Welding and Hardware v. Illinois Workers' Compensation Commission*, 396 Ill. App. 3d 754 (4th Dist. 2009). In *Greene Welding and Hardware*, an employee received TTD benefits during the period he performed light work duties after he suffered 100% loss of use of his right ring finger and 50% loss of use of his right middle finger. Once the employee returned to full work duty, which was also the date he reached "maximum medical improvement," he received 12 weeks of PPD payments. The employee brought a claim against his employer for the delay in statutory amputation benefit payments. The

HEYL ROYSTER WORKERS' COMPENSATION UPDATE

August 2020

Editor, Lynsey Welch

commissioner determined that undisputed statutory amputation benefits under section 8(e) of the Act accrue from the date of the accident and should be paid as soon as the amputation and average weekly wage are determined. The commissioner's decision was affirmed on appeal and the employer was ultimately subjected to penalties for the delay in statutory amputation payments.

The critical takeaway from *Greene Welding and Hardware* is that amputation benefits must be paid to an injured employee once an employer is made aware that there is an amputation loss and the employee was injured in the course of employment, despite the fact that TTD benefits are still being paid. If an employer otherwise delays payment, he can be subject to penalties under the Act, pursuant to sections 19(k), 19(l) and section 16. 820 ILCS 305/19.

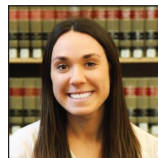
Key Takeaways

Although the complexity of the amputation rate issue can pose a headache, employers who are faced with an amputation claim by an employee should focus on the following four takeaways:

1. Statutory amputation payments under section 8(e) of the Act shall be immediately paid as soon as the employer is made aware of the amputation and the employee's average weekly wage is determined.
2. The PPD rate for amputations is 60% of the employee's average weekly wage, not 66⅔% of the average weekly wage.
3. The minimum amputation rate that must be paid to an employee is 50% of the State's average weekly wage, and the maximum rate is 133⅓% of the State's average weekly wage. This is the rate in effect at the time of injury.

4. PPD benefits under section 8(e) of the Act do not toll during periods for which TTD benefits are being paid.

For a clear guide specifying the exact minimum and maximum rates corresponding to the date of injury, please refer to the Illinois Workers' Compensation Rate Guide prepared by attorneys at Heyl Royster, or refer to the benefits rate chart on the Illinois Workers' Compensation Commission website.



Emma Ray, Rockford Office

Emma is currently in her third year of law school at Northern Illinois University College of Law and was a clerk for Heyl Royster's Rockford office during the summer of 2020. After her 1L year, Emma was an intern at Owings, Wilson & Coleman in Knoxville, Tennessee, where she gained invaluable research and writing experience. During her second year of law school, Emma was a Moot Court Champion and served as member of the *Northern Illinois University Law Review* where she was selected as a Lead Articles Editor. Emma graduated from Northern Illinois University with a major in Business Management, a minor in Finance and Marketing, and was a member of the softball team.

HEYL... ROYSTER

Contact Attorney:

Brad A. Antonacci
bantonacci@heyloyroyster.com
Kevin J. Luther
kluther@heyloyroyster.com
312.971.9807

Chicago Zone

Dockets Covered:

Elgin • Geneva • Wheaton

Contact Attorney:

Kevin J. Luther
kluther@heyloyroyster.com
815.963.4454

Zone 6

Dockets Covered:

Rockford • Waukegan • Woodstock

Contact Attorneys:

Kevin J. Luther
kluther@heyloyroyster.com
Lynsey A. Welch
lwelch@heyloyroyster.com
815.963.4454

Zone 5

Dockets Covered:

Kankakee • New Lenox • Ottawa

Contact Attorney:

Kevin J. Luther
kluther@heyloyroyster.com
815.963.4454

Zone 4

Dockets Covered:

Bloomington • Rock Island • Peoria

Contact Attorney:

Dana J. Hughes
dhughes@heyloyroyster.com
309.676.0400

Zone 3

Dockets Covered:

Quincy • Springfield • Urbana

Contact Attorney:

Bruce L. Bonds
bbonds@heyloyroyster.com
217.344.0060

Zone 2

Dockets Covered:

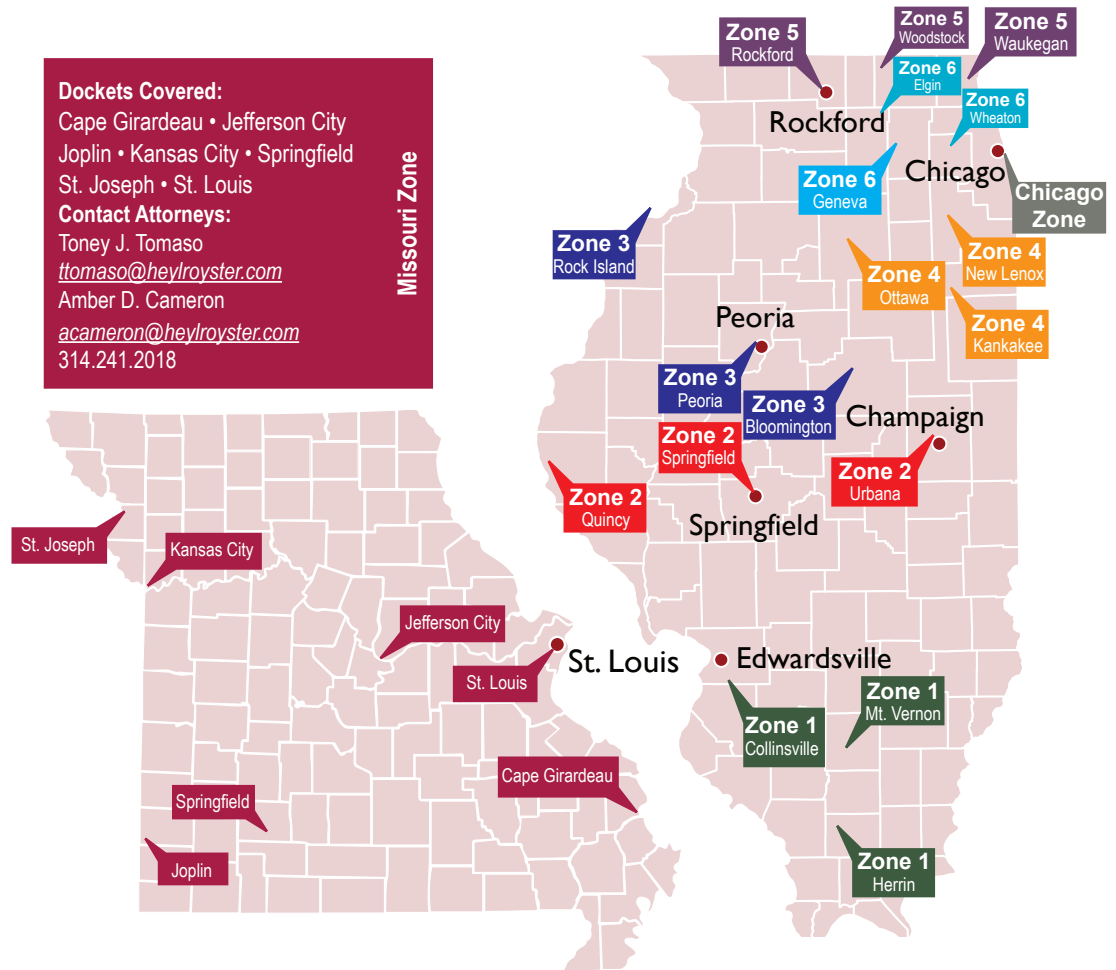
Collinsville • Herrin • Mt. Vernon

Contact Attorneys:

Toney J. Tomaso
ttomaso@heyloyroyster.com
618.656.4646

Zone 1

REGIONAL ZONE MAPS



Workers' Compensation Practice Chair

Contact Attorney:

Toney Tomaso - ttomaso@heyloyroyster.com
217-344-0060

Workers' Compensation Appellate

Toney Tomaso - ttomaso@heyloyroyster.com
Dana J. Hughes - dhughes@heyloyroyster.com
217-344-0060

State of Wisconsin

Contact Attorney:

Kevin J. Luther - kluther@heyloyroyster.com
815-963-4454

Jones Act Claims

Contact Attorney:

Ann Barron - abarron@heyloyroyster.com
618-656-4646

WORKERS' COMPENSATION OFFICE LOCATIONS

Champaign

301 N. Neil St.
Suite 505
Champaign, IL
61820
217.344.0060

Chicago

33 N. Dearborn St.
Seventh Floor
Chicago, IL
60602
312.853.8700

Edwardsville

105 W. Vandalia St.
Mark Twain Plaza III
Suite 100
PO Box 467
Edwardsville, IL
62025
618.656.4646

Peoria

300 Hamilton Blvd.
PO Box 6199
Peoria, IL
61601
309.676.0400

Rockford

120 W. State St.
Second Floor
Rockford, IL
61101
815.963.4454

Springfield

3731 Wabash Ave.
Springfield, IL
62791
217.522.8822

St. Louis

701 Market St.
Peabody Plaza
Suite 1505
St. Louis, MO
63101
314.241.2018

WWW.HEYLROYSTER.COM

WORKERS' COMPENSATION PRACTICE GROUP



Practice Group Chair

Toney Tomaso

ttomaso@heyloyster.com

Champaign Office



Contact Attorney:

Bruce Bonds

bbonds@heyloyster.com



John Flodstrom

jflodstrom@heyloyster.com



Joseph Guyette

jguyette@heyloyster.com



Bradford Peterson

bpeterson@heyloyster.com



Toney Tomaso

ttomaso@heyloyster.com

Chicago Office



Contact Attorney:

Brad Antonacci

bantonacci@heyloyster.com



Kevin Luther

kluther@heyloyster.com



Lynsey Welch

lwelch@heyloyster.com



Reginald Lys

rlys@heyloyster.com



Joseph Rust

jrust@heyloyster.com

Edwardsville Office



Contact Attorney:

Toney Tomaso

ttomaso@heyloyster.com



John Flodstrom

jflodstrom@heyloyster.com



Amber Cameron

acameron@heyloyster.com

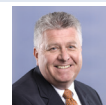
Springfield Office



Contact Attorney:

Dan Simmons

dsimmons@heyloyster.com



John Langfelder

jangfelder@heyloyster.com



Jessica Bell

jbell@heyloyster.com

Peoria Office



Contact Attorney:

Dana Hughes

dhughes@heyloyster.com



Craig Young

cyoung@heyloyster.com



James Manning

jmanning@heyloyster.com



Jessica Bell

jbell@heyloyster.com

Rockford Office



Contact Attorney:

Kevin Luther

kluther@heyloyster.com



Lynsey Welch

lwelch@heyloyster.com



Christopher Drinkwine

cdrinkwine@heyloyster.com



Jordan Emmert

jemmert@heyloyster.com



Wendi Werren

wwerren@heyloyster.com



Adam Rosner

arosner@heyloyster.com

St. Louis Office



Contact Attorneys:

Toney Tomaso

ttomaso@heyloyster.com



Amber Cameron

acameron@heyloyster.com



Jenna Scott

jscott@heyloyster.com

Appellate



Contact Attorney:

Toney Tomaso

ttomaso@heyloyster.com



Dana Hughes

dhughes@heyloyster.com

Below is a sampling of our practice groups highlighting a partner who practices in that area – For more information, please visit our website www.heyloyster.com



Appellate Advocacy

Craig Unrath
cunrath@heyloyster.com



Business and Commercial Litigation

John Heil
jheil@heyloyster.com



Business Organizations & Transactions

Ken Davies
kdavies@heyloyster.com



Casualty/Tort Litigation

Nick Bertschy
nbertschy@heyloyster.com



Civil Rights/Section 1983 & Correctional Healthcare

Keith Fruehling
kfruehling@heyloyster.com



Construction

Mark McClenathan
mmcclenathan@heyloyster.com



Employment & Labor

Brian Smith
bsmith@heyloyster.com



Governmental

Andy Keyt
akeyt@heyloyster.com



Healthcare

Roger Clayton
rclayton@heyloyster.com



Insurance Services

Patrick Cloud
pcloud@heyloyster.com



Long Term Care/Nursing Homes

Tyler Robinson
trobinson@heyloyster.com



Product Liability

Mark Hansen
mhansen@heyloyster.com



Professional Liability

Renee Monfort
rmonfort@heyloyster.com



Toxic Torts & Asbestos

Kent Plotner
kplotner@heyloyster.com



Trucking/Motor Carrier Litigation

Matt Hefflefinger
mhefflefinger@heyloyster.com



Workers' Compensation

Toney Tomaso
ttomaso@heyloyster.com



Scan this QR Code
for more information about
our practice groups and attorneys

Peoria	Champaign	Chicago	Edwardsville	Rockford	Springfield	St. Louis	Jackson
300 Hamilton Blvd. PO Box 6199 Peoria, IL 61601 309.676.0400	301 N. Neil St. Suite 505 Champaign, IL 61820 217.344.0060	33 N. Dearborn St. Seventh Floor Chicago, IL 60602 312.853.8700	105 W. Vandalia St. Mark Twain Plaza III Suite 100 PO Box 467 Edwardsville, IL 62025 618.656.4646	120 W. State St. Second Floor Rockford, IL 61101 815.963.4454	3731 Wabash Ave. PO Box 9678 Springfield, IL 62791 217.522.8822	701 Market St. Peabody Plaza Suite 1505 St. Louis, MO 63101 314.241.2018	1000 Highland Colony Pkwy. Suite 5203 Ridgeland, MS 39157 800.642.7471