

BELOW THE RED LINE

HEYL ROYSTER

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

A Newsletter for Employers and Claims Professionals

November 2020

A WORD FROM THE PRACTICE CHAIR

As we prepare to wrap up the month of November, we often find ourselves reflecting on what we are thankful for. I have much to be thankful for this Thanksgiving. My faith, my family, my friends, my firm, and all of you who are reading this. Yes, you, our clients and friends, in the always fun and challenging fight to get our workers' compensation claims under control and moving forward in a positive direction. Thank you for allowing us to be part of your Team. There is no one else we would want to be in the workers' compensation trenches with as we process and litigate our claims. We are blessed to have you as clients and we enjoy all of our relationships whether they have lasted forty years or just started in 2020. We will always be here for you, whether the battle is big or small; whether we win or lose; we will make sure your needs are met. On behalf of the Heyl Royster Workers' Compensation Team I want to say thank you.

A quick Commission update for you: Chairman Michael Brennan has extended the emergency plan of action suspending in-person hearings until December 31, 2020, in light of the COVID-19 pandemic. This was expected. The Special Processes Procedures for in-person 19(b) hearings and virtual *pro se* settlement contract hearings have also been extended through December 31, 2020. We previously provided you with an in depth explanation of those emergency procedures [here](#).

As events continue to evolve, the Heyl Royster Team will continue to keep you updated, as this is a rapidly changing situation. The Heyl Royster Team

is prepared and ready to take care of all necessary business on your behalf with the implementation of the Chairman's emergency plan. Feel free to contact any Heyl Royster Team member if you have questions or concerns with how these new policies will impact future handling of your claims.

My partner, Joe Guyette (Champaign office), has provided an article this month on the subject matter of mandatory reporting, per the Illinois Workers' Compensation Act, from the standpoint of an employer. We are frequently asked if the reporting is mandatory (after a work injury), and how does the employer or its duly designated representative report that injury properly. What you will see is a good roadmap with highlights as to what you must do and how to do it. This article also provides you with a LINK to the IWCC website and a video to assist you with the "Employer's First Report of Injury" as it relates to the process, and the actual form to be filled out. If you ever have questions or concerns about this process please do not hesitate to contact me or any of the Heyl Royster workers' compensation attorneys you work with.



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HEYL ROYSTER WORKERS' COMPENSATION UPDATE

November 2020

Editor, Lynsey Welch

FIRST REPORT OF INJURY: TIMING, FILING REQUIREMENTS, AND BEST PRACTICES

By: Joseph Guyette, Champaign Office

When an employee is injured, there are a number of tasks to be completed in a very short period of time. First and foremost is the health and safety of the injured employee. After that, attention can be turned to paperwork, investigations, and preservation of evidence. While all of these tasks are important, the first step that is absolutely required by the Illinois Workers' Compensation Act is completion of the "Employer's First Report of Injury" form.

Where is the form located?

The required form is also known as "Form 45," and it can be found under the "Forms" section on the IWCC website. Click here: <https://www2.illinois.gov/sites/iwcc/Documents/ic45FORM.doc> to find the form on the Commission's website.

When does the form need to be submitted?

The Workers' Compensation Act requires the Employer's First Report of Injury form to be submitted electronically within thirty days of any accident involving the loss of more than three scheduled workdays. For an employee death, the form must be submitted within two workdays.

How is the form submitted?

As of June 14, 2019, Illinois requires this form to be submitted electronically. These forms are filed using the XML file format. The Workers' Compensation Commission website provides detailed information regarding the requirements for filing at the following address: <https://www2.illinois.gov/sites/iwcc/Pages/EDImplementation.aspx>

Best practices for completing the Employer's First Report of Injury

Timing:

Assuming the injured employee's condition allows it, it is best to complete the Employer's First Report of Injury as soon as possible. At that point, the information should be fresh and readily available. Perhaps more importantly, the information can be gathered from the injured employee before he or she begins thinking about Workers' Compensation benefits. After an injured employee has had an opportunity to Google Workers' Compensation laws or talk to an attorney, the version of events leading up to an accident may change.

Template for investigation:

The First Report of Injury provides a good template to guide the investigation of an accident. In addition to listing the date, time, and location of the accident, the form requires information that can lead to additional defenses. Specifically, there is a portion of the form asking about what the employee was doing when the accident occurred. Information contained in this field can help evaluate whether the employee was in the course and scope of his or her employment at the time of the injury.

Another section of the form asks about the body parts affected as a result of the accident. A thorough response to this section can help us exclude body parts or conditions that an employee subsequently claims were involved in the accident. If an employee falls and injures his left shoulder, but subsequently claims an increase in low back pain, this report can form the basis for a defense.

Finally, the form includes a section asking about the object or substance that directly harmed the employee. This portion of the form can help us identify whether there is another entity or individual that is at fault for causing the employee's accident.

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If a vendor or outside contractor makes a mess that causes an employee to fall, we can pursue a civil lawsuit to recover amounts paid for Workers' Compensation benefits.

Be thorough:

It is critical that the Employer's First Report of Injury is completed in a thorough manner. Vague or incomplete entries often make for additional work in the weeks, or even months, after an accident has occurred. For example, if the report simply indicates that an employee "slipped/tripped," it is impossible to evaluate compensability or assess potential defenses. Did that employees slip on ice, or did he simply trip over his own feet? Was a fall caused by careless coworker's misplaced tools, or by the cleaning service that had spilled floor wax? Did the accident occur inside of your building, or in the parking lot?

The best time for gathering all these details is right after an accident has occurred. Finding information and witnesses long after an accident has occurred can be difficult, if not impossible. Thoroughly completing the Employer's First Report of Injury provides the best opportunity to defend a Workers' Compensation claim.

Conclusion

The Workers' Compensation Act requires the Employer's First Report of Injury to be completed and electronically filed in a relatively short amount of time. If it has to be done, you may as well do it right and do it now. Using the form as a template for an investigation is the first step. The second step is to be thorough in filling in information. Once that is done, claims handlers and defense counsel will be in the best position to evaluate compensability and defenses.

If you have any questions about accident investigation or completing and filing the Employer's First Report of Injury, feel free to contact the Workers' Compensation team at Heyl, Royster, Voelker & Allen.



Joseph Guyette, Champaign Office

Joe concentrates his practice in the areas of workers' compensation defense, professional liability, and employment matters. Joe has taken several bench and jury trials to verdict, and has drafted and argued numerous dispositive motions. Joe has handled workers' compensation arbitration hearings at venues throughout the state, and has argued multiple cases before the Workers' Compensation Commission. Joe regularly handles depositions of expert witnesses and treating physicians in both civil and workers' compensation matters. Joe also devotes a portion of his practice to representing the firm's clients at depositions of plaintiffs and fact witnesses in asbestos personal injury matters. During law school, he served as Articles Editor for the University of Illinois Journal of Law, Technology & Policy.

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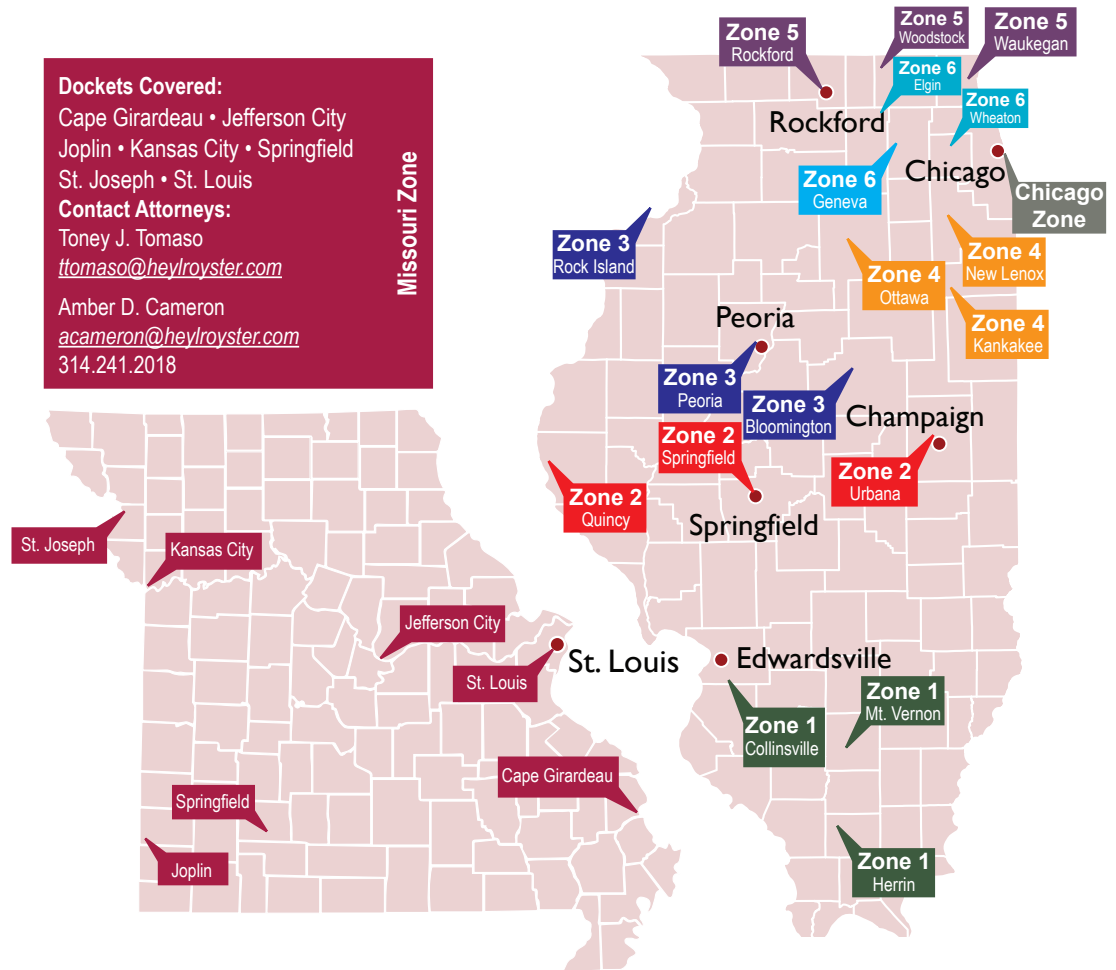
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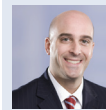
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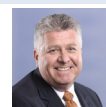
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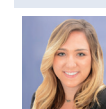
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