

Important Procedural Updates Effective 7-1-21

By: [John Langfelder](#) - Springfield Office

With the administration of COVID-19 vaccinations and easing of pandemic restrictions, the Illinois Workers' Compensation Commission has now issued further revisions to the guidelines for Arbitration procedures, effective July 1, 2021. While in-person trials and appearances are returning in earnest, the Commission has retained its procedure of conducting the monthly docket/status calls and pre-trial hearings virtually via Webex. The Commission has received positive feedback from the majority of participants and use of the virtual format has been shown to be very efficient and effective. The following is a summary of the procedures that went into effect as of July 1, 2021. We expect further changes in procedures, which will be reported to you as they are announced or become available.

Docket Calls and Pre-Trial Hearings

As a starting point, each Arbitrator will continue to conduct their monthly docket calls via Webex. As with any change or new format, use of Webex was a learning process and its use continues to improve with each passing docket. With some exceptions, Arbitrators are able to address properly noticed 19(b) hearings and hearing requests for redline and other cases, and set those matters for a virtual pre-trial hearing on the days during the docket cycle specifically set aside for pre-trial hearings. Cases are set for pre-trial on designated times and dates with the number of cases limited to the available number of slots. Parties are able to discuss and work out conflicting dates for a pre-trial in advance of each docket, but many times the assignment of the pre-trial date is determined at the docket call and at the discretion of the Arbitrator. In some instances due to limitation of available pre-trial slots, the Arbitrator has declined to set a date and continued the case to the next docket. A pre-trial hearing is mandatory on all cases before an arbitration hearing can be set.

Pre-trial hearings will also continue to be held virtually via Webex absent an Order by the Arbitrator for good reason. During the assigned pre-trial hearing, each side is allowed time to present their position and opinions, and outline the issues in dispute. When requested or appropriate, the status of settlement negotiations and the opinions as to value will be discussed. The Arbitrator will then weigh in with their opinions, recommendations, or suggestions. While the results are not always accepted and are not binding, many times a pre-trial hearing will resolve disputes and break impasses, resulting in a resolution or moving a case forward. In the event the pre-trial hearing does not result in resolution of the dispute or settlement of the case, the matter can then be set for trial.

Under the new guidelines effective July 1, 2021, after a pre-trial hearing has taken place, the parties must now wait thirty days, or until the next docket cycle, to have their case set for trial. Cases can no longer be noticed for hearing during a docket cycle with the expectation that the case will go to trial during the same docket cycle. If the case needs to be set for trial following completion of the pre-trial, the Arbitrator will set the matter for trial (before the same assigned arbitrator) during the next month docket at the same location. For example, Arbitrator Lee's Quincy docket call was July 7th with pre-trials scheduled for July 9th and trials would have occurred on July 12th. With the thirty day wait period, a case that was noticed for hearing before Arbitrator Lee on the July 7th docket would have been set for a pre-trial hearing on July 9th. If the pre-trial hearing was not successful in reaching a resolution, that case would be set for trial before Arbitrator Lee the following month in Quincy on August 9th. Similarly, a Quincy case noticed for hearing during Arbitrator O'Brien's August 4th docket call that underwent an unsuccessful pre-trial hearing on August 6th, would not be set for trial until the September 7th trial date. The online arbitration calendars have been updated to account for this trial schedule change.

Most other dockets throughout the state have multiple pre-trial dates and multiple trial dates, but the result would be the same. Cases noticed for hearing and undergoing an unsuccessful pre-trial hearing during the assigned docket call month will be set for trial before the assigned arbitrator during the next month's trial dates at the same hearing location. Cases noticed and undergoing a pre-trial hearing in

August will not be set for trial until September; September cases undergoing a pre-trial in September will not be set for trial until October, and so on.

One of the purposes of the mandatory delay between pre-trial and trial is to allow time for the parties to work out and resolve the existing disputes and possibly reach a resolution or settlement of the case without the need for trial. We see this change as a positive. As happens many times following a pre-trial, the parties may need or want time to attempt to resolve their disputes based on the issues discussed and opinions, recommendations, and suggestions offered by the Arbitrator. The results of a pre-trial could also impose deadlines for the parties to complete pending work needed to prepare the case for trial such as scheduling witness availability, obtaining records or an impairment rating; scheduling and completing an IME, Utilization Review or FCE; or conducting necessary medical depositions of treating or IME physicians. The imposing of deadlines for completion of pre-trial preparation should eliminate delays caused by the failure to perform such work in a timely manner. While the pandemic may be the cause of some delays and likely used as an explanation, a party will need to explain or show good cause as to why an IME was not scheduled, a deposition not conducted, or a deadline not met in order to avoid a continuance request being denied and the case being set for trial.

A case that has undergone a pre-trial hearing, but not set for trial, does not need to have a subsequent pre-trial hearing unless there are new or additional issues that need to be addressed. During the appropriate monthly docket call, the parties may announce that a pre-trial hearing was already held and the case is ready for trial. At their discretion, the Arbitrator will then set the case for trial.

Once a case has been set for trial by the Arbitrator on a date certain, the parties must notify the Arbitrator if the claim has been settled, if a continuance is needed, or if the parties are ready to proceed. Failure to notify the Arbitrator could result in the case being dismissed or the allowance of the Petitioner to proceed *pro se*.

Many cases that are set for pre-trial hearings do not result in the need for a trial. Under the prior guidelines, cases were set for pre-trial with a trial date request for the same docket cycle. Quite often, cases that were set for trial during the same docket cycle would be continued following a pre-trial and then noticed up again for the next docket cycle. With the 30-day delay, the parties are now allowed time to work out their differences, attempt resolution, or prepare for trial if there is no compromise. The new guidelines should eliminate or greatly reduce the unnecessary filing of hearing notices when one side or the other has no intention of proceeding to trial at that time. There are a maximum number of cases that can be set by each Arbitrator during their specified trial dates. It is anticipated, or hoped, that any case set for trial under the new format will actually proceed on the assigned date.

As with all change, this will be a growing process. It is expected that the 30-day delay will allow cases to move forward more efficiently in that only cases that are truly ready for or in need of trial will be set. Currently there are specified days for pre-trials and trials for each docket but, depending on the docket, there could be a potential for assigning or converting a trial date to a pre-trial date should the need arise.

Motions, *Pro Se* Settlements and Other Matters

Certain motions and matters that require a personal appearance, such as a Motion for Leave to Withdraw, can be heard in person by the Arbitrator on the first trial date in each setting, provided the party filing the motion gives proper notice to all participants. Proper notice will require and include notice of not only the date of the monthly docket call, but also the date of the Arbitrator's first trial date for that monthly call in order to have a hearing of the motion. Absent proof of proper notice advising the appropriate parties of both dates, these motions generally will not proceed absent discussion and approval by the Arbitrator.

Pro se settlements will still be conducted virtually via Webex, provided the Respondent presents the appropriate documentation, records, and an affidavit signed by the Petitioner. Assuming sufficient documentation is presented, the Arbitrator will set the time and date for approval of the contract via

Webex conference. One advantage of the submission of the documents to the Arbitrator in advance is that it gives the Arbitrator time to review the contracts and records and address any deficiencies or questions with Respondent's counsel before the date and time for Webex conference is set. The Arbitrator also has the discretion to schedule approval of the contract by an in-person hearing, which is generally scheduled on the first trial date of the Arbitrator's docket cycle.

Unfortunately, the new procedures and guidelines have not yet addressed the enforcement of redline cases or dismissal of such cases for want of prosecution. We believe this issue will be addressed by the Commission in the near future and will provide updated information once it is announced or known.

These changes will remain in effect for the foreseeable future unless changed or supplemented by further revised guidelines. While we expect there to be further changes in these guidelines, it is clear that virtual appearances via Webex for all docket calls and pre-trial hearings will permanently remain. It is expected that these changes will lead to a more efficient process and more effective handling of the defense or resolution of any pending or new claims.

The new guidelines should answer and address questions regarding "*how can my case be moved forward*" or "*how can I get my case to trial?*" This summary should provide you with a thumbnail sketch of the current procedures and guidelines now in place and what needs to be done to move current cases.

As a final reminder, the provision granting a rebuttable presumption for COVID-19 under the Illinois Worker's Compensation Act was not extended beyond its sunset date of June 30, 2021.

Should you have any questions on how the new guidelines or procedures will affect the handling of any of your claims or cases, please feel free to contact your Heyl Royster attorney at any time.