

BELOW THE RED LINE

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

April 2025

A WORD FROM THE PRACTICE CHAIR

Last month, I very (very) briefly shared that I'm now serving as the Chair of Heyl's Workers' Compensation Practice Group. I also noted that while we have new leadership, we're still the "same" great team. That's mostly true—but in the best possible way. We've been fortunate to recently welcome several new attorneys, both new graduates and seasoned practitioners, to our practice group. These new additions to our group have already added fresh perspectives while energizing and strengthening our team. One of those new additions is this month's author, [Allison Klein](#). Allison took on the challenging task of analyzing the recent appellate court decision in *Tazewell County v. Illinois Workers' Compensation Commission*. In this case, the Illinois Appellate Court addressed the compensability of injuries related to preexisting conditions under the Workers' Compensation Act and marks a pivotal moment in Illinois workers' compensation law, as the court held that pain alone—without evidence of structural change—can constitute a compensable aggravation of a preexisting condition when caused by repetitive work activities. Allison provides a thorough analysis of the decision and offers strategic insights on how we can effectively distinguish our clients' claims considering this expanded scope of compensable injuries under *Tazewell County*.

Jessica Bell



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A PAINFUL PRECEDENT:

Tazewell County and the Expanding Scope of Compensable Injuries



BY ALLISON KLEIN

On January 31, 2025, the Illinois Appellate Court, Fourth District, examined the impact of an accident from a repetitive injury wherein a pre-existing injury wasn't worsened but rather resulted solely in the petitioner's pain. In *Tazewell County v. The Illinois Workers' Comp. Comm'n*, 2025 IL App (4th) 230754WC, the appellate court affirmed the ruling of the Commission and circuit court, solidifying an analysis that an asymptomatic condition that becomes painful due to work activity is enough to be compensable under the Workers' Compensation Act (Act) 820 ILCS 305/1 *et seq.*

As a concise overview, the aggravation or acceleration of a pre-existing condition caused by a work-related activity is compensable under the Act. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 204-205 (2003). Under the Act, an employee must establish that she sustained an accidental injury "arising out of" and occurring "in the course of her employment" by a preponderance of the evidence. 820 ILCS 305/2 (West 2018); *Sisbro*, 207 Ill. 2d 193 at 203. An injury "arises out of" employment if there is some causal connection between the employment and the accidental injury. *McAllister v. Illinois Workers' Comp. Comm'n*, 2020 IL 124848, ¶ 36. In that, even if an employee had a pre-existing condition that made her more vulnerable to injury, recovery for an accidental injury will not be denied if she can show that the employment was also a causative factor. *Sisbro*, 207 Ill. 2d 193 at 205. While these requirements

have long been established under the Act, the issue of pain alone caused by an employee's job duties had not been viewed as a compensable condition because it was considered merely a symptom of an underlying injury.

For over 20 years, the standard for evaluating the compensability of Illinois Workers' Compensation cases involving a pre-existing condition has hinged on the findings in *Sisbro v. Indus. Comm'n*, 207 Ill.2d 193 (2003) in which the Illinois Supreme Court conducted a detailed study of precedential caselaw and affirmed the award of benefits to a petitioner who claimed benefits for an ankle injury, despite various preexisting maladies. In so doing, the court focused the analysis of preexisting condition cases on conditions, rather than symptoms, expressly articulating that to establish a compensable injury, a worker must prove "that a work-related accidental injury aggravated or accelerated the preexisting disease such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *Id.* at 204.

In *Tazewell County*, the Illinois Appellate Court, Fourth District issued a decision with guaranteed impact over the entire Workers' Compensation community, as the issue addressed was one of first impressions in Illinois. Specifically, the issue of compensability for repetitive

work activity resulting solely in pain from a pre-existing non-work-related condition was addressed, which had no prior binding precedent before *Tazewell County*.

The petitioner, in this case, Dora Potts, worked as a full-time dental hygienist for the respondent from 2005 until 2019. *Id.* ¶¶ 4, 6. Potts, who had a pre-existing rotator cuff tear, began to notice pain in her left shoulder in January 2019 due to consistently having her arm elevated at work to perform her job duties. *Id.* ¶ 7. Specifically, the petitioner maintained her left arm at a 90-degree angle straight out from her shoulder when she worked on a patient, a method she was taught in school and used by most dental hygienists. *Id.* ¶ 5. This left shoulder pain persisted, leading to surgical intervention for a rotator cuff tear. *Id.* ¶ 12. Petitioner’s surgeon, Dr. Merkley, stated in his narrative report that while he did not believe the nature of the petitioner’s duties caused her rotator cuff tear, her repetitive work activities “were a contributory cause of pain at her left shoulder” and that there was a causal connection between her work for the respondent and her left shoulder pain. *Id.* ¶ 13.



At the hearing, the arbitrator denied the petitioner’s request for temporary disability and concluded that she had failed to prove she sustained an accident arising out of and occurring in the course of her employment with the respondent. *Id.* ¶ 17. Potts appealed the arbitrator’s decision to the Commission. The Commission reversed the arbitrator’s decision and found that the petitioner had, in fact, sustained a compensable injury to her left shoulder despite her pre-existing tear because of her work duties as a dental hygienist, specifically in how she positioned her arm to reach a patient, aggravated her condition. *Id.* ¶ 18.

On further appeal to the appellate court, the main issue evaluated was whether repetitive work activity that results solely in pain from a pre-existing non-work-related condition was compensable under the Act in the absence of a concomitant worsening of the underlying non-work-related condition. *Id.* ¶ 27. Put simply, the appellate court was tasked with determining whether pain stemming from a pre-existing condition should be compensable, specifically when that pre-existing condition wasn’t actually worsened. Recall that Potts’ repetitive work activities were not documented to have increased the size of her rotator cuff tear nor otherwise aggravated the condition of her left shoulder. *Id.* ¶ 41. Instead, Potts’ repetitive work activities only caused her increased pain in her left shoulder.

The respondent centered their argument on the issues of accident and causation and contended that pain alone is not a compensable condition under the Act. *Id.* ¶ 30. This argument held merit because, prior to the decision in *Tazewell County*, prevailing case law supported the position that pain alone was generally not compensable as a condition. Rather, pain was typically considered a symptom of an underlying injury or condition, but not the condition or injury itself.

Potts and her counsel argued that she had sustained a compensable injury to her left shoulder because her work duties aggravated her pre-existing rotator cuff tear, which warranted the surgery she ultimately received. This was evidenced in Potts’ medical testimony, which documented her left shoulder pain repeatedly improved while she was off work but consistently returned when she resumed working a few days later. *Id.* ¶ 18. In this case, while her rotator cuff tear was not technically worsened by her everyday job duties, these duties were deemed a contributing factor to her pain.

Ultimately, the appellate court ruled that Potts’ repetitive trauma and resulting left shoulder pain arose out of and in the course of her employment with the respondent and that her left shoulder pain was causally related to her repetitive work duties. *Id.* ¶¶ 33-34. Based on this ruling, the petitioner was entitled to maintain the awards she received from the Commission for TTD and PPD benefits in spite of the respondent’s objections. *Id.* ¶ 35. In short, despite finding no causal connection between the petitioner’s work duties and her pre-existing



left shoulder rotator cuff tear, there was a compensable causal connection between her work duties and her left shoulder pain.

This case highlights a substantial shift in causation that directly impacts employers: if a petitioner with an asymptomatic pre-existing condition experiences a new onset of pain that can be connected to a work-related activity, that symptomatic condition (pain) is compensable under the Act as an aggravation of a pre-existing condition, even in the absence of a change in the pre-existing condition. But what amount and duration of symptomology at work is enough to render a non-work-related condition compensable under the Act? How will this case impact notice and statute of limitations questions? Attorneys going forward will have lingering questions and may experience further pushback from arbitrators who view acute, traumatic injuries that cause pain as compensable based on this ruling.


Despite the ruling in *Tazewell County*, attorneys can still effectively advocate for their clients. This is because, at the outset of such a polarizing decision, *Tazewell County* is a distinguishable case. Consider the extent of repetition in the petitioner's job while working for the respondent, which provides a substantial basis for arguing not every petitioner can rely on *Tazewell County* to support their claim. Potts worked as a full-time dental hygienist for over 14 years, seeing as many as 18 patients a day, and did not get a break from her work unless there was a cancellation. *Id.* ¶ 6. The pain she experienced in her left shoulder resulted from years of consistent, constant repetition in her work duties. Further, Potts experienced her pain because she had to hold her arm and shoulder in such a way to perform her job duties that her shoulder became aggravated. Contrast her experience with most petitioners whose asymptomatic conditions (arguably) become painful; it is likely that such pain does not rise to the same extent and duration as Potts' did.

The case of *Tazewell County v. The Illinois Workers' Comp. Comm'n*, 2025 IL App (4th) 230754WC emphasizes the need for attorneys and employers to rigorously analyze the basis for a workers' compensation claim, including the extent and duration of a petitioner's symptoms, all medical history and pre-existing injuries, and the scope of their work duties. This case accentuates the need for employers to carefully document job descriptions,

physical demands, and the mechanics necessary to properly complete the job duties of an employee in order to assist in the defense of claims. Further, documentation and testimony of supervisors and co-workers about an employee's complaints (or lack thereof) while completing work tasks will be more important than ever. Section 12 examiners will also need to be cognizant of addressing pain level expectations with given medical conditions and whether any work activities may abnormally increase pain levels.

The *Tazewell County* ruling, while presenting obstacles to the defense of claims, is not entirely undermining. It will challenge attorneys and employers to delve deeper into the root causes of documented pain and require clear evidence linking work activities to the onset of



symptoms from previously asymptomatic conditions. Your workers' compensation team at Heyl Royster is prepared to help you navigate the challenges and complexities this decision may introduce in future cases. If you have any questions about claims involving pain as a potentially symptomatic work-related condition – or any other workers' compensation matters – please reach out to one of our workers' compensation attorneys. 

ABOUT THE AUTHOR



ALLISON KLEIN

Associate in Chicago, IL

- Medical Malpractice
- Workers' Compensation

Driven by genuine empathy and a passion for the law, Allie is always mindful of her services' real impact on clients' lives.

Allie Klein, an Associate Attorney at our Chicago office, has always been driven to pursue a career in law. Her journey began at Michigan State University, where she earned her B.A. in Political Science Pre-Law in 2021. Following this, she graduated *cum laude* from Northern Illinois University College of Law in 2024 and excelled in the Universal Bar Exam, qualifying her to practice in any universal jurisdiction.

During her time at NIU Law, Allie actively contributed to the Student Animal Legal Defense Fund and the Juvenile and Family Law Association, demonstrating her commitment to positively impacting her community. Her diverse internships, ranging from in-house roles at corporations to a legal internship for a social security and disability law firm, have equipped her with invaluable skills and a deep understanding of the importance of kindness and attention to detail in client interactions.

As an attorney, Allie is known for her meticulous and thorough approach. A genuine empathy for her clients drives her, and she is always mindful of her services' real impact on their lives. Her dedication to detail and a people-oriented mindset make her an invaluable asset to our team. Beyond her legal career, Allie enjoys walking along Chicago's lakefront and cherishes time spent with friends, family, and her rescue pitbull.

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If your business, organization, or you as an individual need premier defense services from an industry-leading workers' compensation defense firm, the dedicated legal minds at Heyl Royster are ready to provide you with the legal advice and legal services that you deserve. From complex claims to disputes, causation, and more, our workers' compensation attorneys are experienced litigators ready to come to your defense.

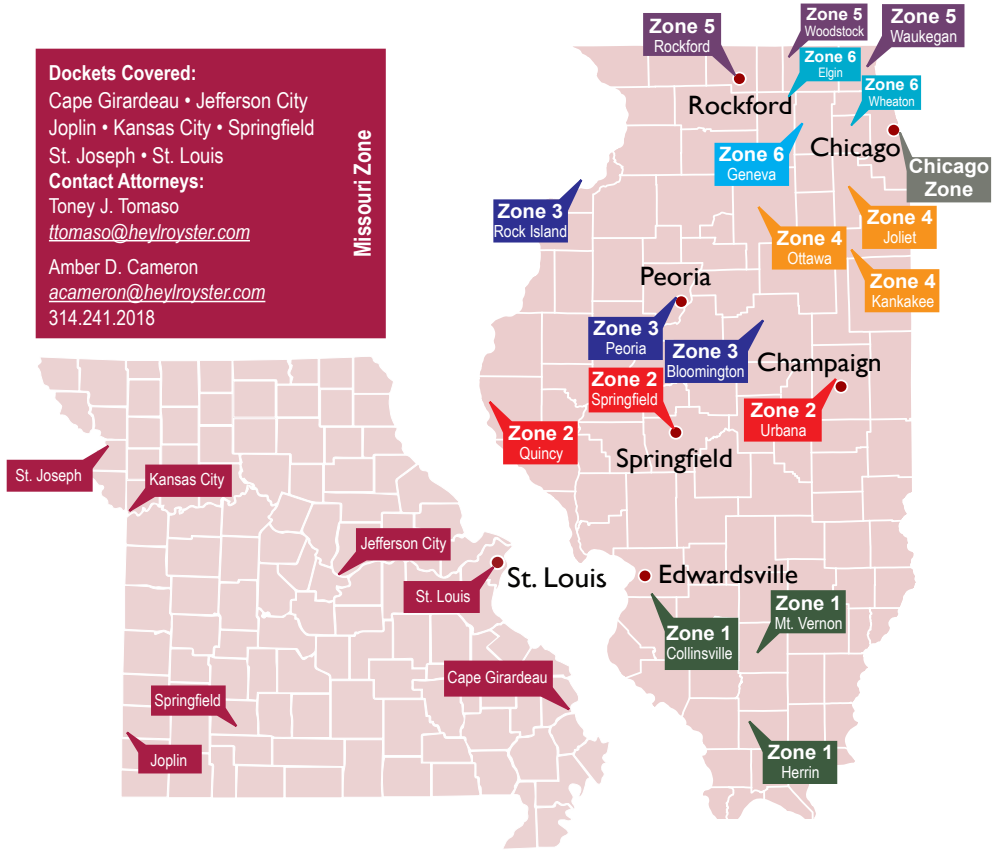
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TTD, DEATH, PERM. TOTAL & AMP. RATES

ACCIDENT DATE	MAX. RATE TTD, DEATH, PERM. TOTAL, AMP.	MIN. RATE DEATH, PERM. TOTAL, AMP.
7/15/18 to 1/14/19	\$1480.12	\$555.05
1/15/19 to 7/14/19	\$1506.81	\$565.06
7/15/19 to 1/14/20	\$1529.84	\$573.69
1/15/20 to 7/14/20	\$1549.07	\$580.90
7/15/20 to 1/14/21	\$1572.01	\$589.51
1/15/21 to 7/14/21	\$1613.93	\$605.23
7/15/21 to 1/14/22	\$1693.76	\$635.16
1/15/22 to 7/14/22	\$1734.83	\$650.56
7/15/22 to 1/14/23	\$1792.73	\$672.28
1/15/23 to 7/14/23	\$1848.20	\$693.08
7/15/23 to 1/14/24	\$1861.18	\$697.96
1/15/24 to 7/14/24	\$1897.92	\$711.72
7/15/24 to 1/14/25	\$1907.79	\$715.42
1/15/25 to 7/14/25	\$1936.86	\$726.34

MINIMUM TTD & PPD RATES

# of dependents, including spouse	7/15/10-1/14/20	1/15/20-7/14/20	7/15/20-1/14/21	1/15/21-1/14/22	1/15/22-1/14/23	1/15/23-1/14/24	1/15/24-1/14/25	1/15/25-7/14/25
0	\$220.00	\$246.67	\$266.67	\$293.33	\$320.00	\$346.67	\$373.33	\$400.00
1	\$253.00	\$283.67	\$306.67	\$337.33	\$368.00	\$403.88	\$429.33	\$460.00
2	\$286.00	\$320.67	\$346.67	\$381.33	\$416.00	\$456.04	\$485.33	\$520.00
3	\$319.00	\$357.67	\$386.67	\$425.33	\$464.00	\$508.04	\$541.33	\$580.00
4+	\$330.00	\$370.00	\$400.00	\$440.00	\$480.00	\$520.00	\$560.00	\$600.00

MAXIMUM PERMANENT PARTIAL DISABILITY RATES

ACCIDENT DATE	MAXIMUM RATE
7/1/15 to 6/30/16	\$755.22
7/1/16 to 6/30/17	\$775.18
7/1/17 to 6/30/18	\$790.64
7/1/18 to 6/30/19	\$813.87
7/1/19 to 6/30/20	\$836.69
7/1/20 to 6/30/21	\$871.73
7/1/21 to 6/30/22	\$937.11
7/1/22 to 6/30/23	\$998.02
7/1/23 to 6/30/24	\$1024.87
7/1/24 to 6/30/25	\$1045.92

MAXIMUM 8(D)(1) WAGE DIFFERENTIAL RATE

ACCIDENT DATE	MAXIMUM RATE
7/15/20 to 1/14/21	\$1179.01
1/15/21 to 7/14/21	\$1210.45
7/15/21 to 1/14/22	\$1270.32
1/15/22 to 7/14/22	\$1301.12
7/15/22 to 1/14/23	\$1344.55
1/15/23 to 7/14/23	\$1386.15
7/15/23 to 1/14/24	\$1395.92
1/15/24 to 7/14/24	\$1423.44
7/15/24 to 1/14/25	\$1430.84
1/15/25 to 7/14/25	\$1452.68

SCHEDULED LOSSES (100%)

Effective 2/1/06 (and 7/20/05 to 11/15/05)	Effective 2/1/06 (and 7/20/05 to 11/15/05)
Person as a whole	500 wks
Arm	253 wks
Amp at shoulder joint	323 wks
Amp above elbow	270 wks
Hand	205 wks
Repetitive carpal tunnel claims	190 wks
Benefits are capped at 15% loss of use of each affected hand absent clear and convincing evidence of greater disability, in which case benefits cannot exceed 30% loss of use of each affected hand.	
Thumb	76 wks
Index	43 wks
Middle	38 wks
Ring	27 wks
Little	22 wks
Leg	215 wks
Amp at hip joint	296 wks
Amp above knee	242 wks
Foot	167 wks
Great toe	38 wks
Other toes	13 wks
Hearing	
Both ears	215 wks
One ear	54 wks
Eye	
Enucleated	173 wks
One eye	162 wks
Disfigurement	162 wks

Death benefits are paid for 25 years or \$500,000 whichever is greater.

As of 2/1/06, burial expenses are \$8,000.

The current state mileage rate is \$0.70 per mile.

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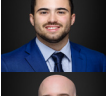
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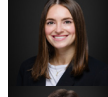
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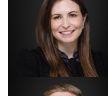
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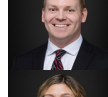
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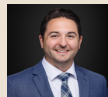


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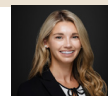


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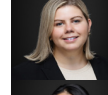
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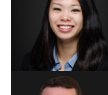
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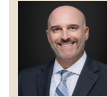


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A regional law firm with more than 100 lawyers and seven offices in Illinois and Missouri, Heyl Royster has served the legal needs of individuals and businesses for over 110 years. With a national reputation in litigation, integrated with significant business and transactional expertise, our attorneys are known for comprehensively representing the interests of our clients with a focus on cost efficiency and success.

We are eager stewards of the law, providing legal services for individuals, businesses and corporations, professionals, healthcare organizations, governmental entities, universities, insurance carriers, and other major institutions. We zealously identify and help develop legal trends and use that knowledge to help our clients accomplish their objectives and goals collaboratively.

OUR PRACTICES

Some attorneys have a broad practice and deal with many different concerns, while others have a more narrow scope, developing a deep knowledge of their chosen subject matter. Heyl Royster prioritizes firm-wide collaboration and teamwork, organizing our attorneys by managing their specific skills and specialties, and developing competitive strategies to best serve our clients.

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- Military Law
- Not-for-Profit Organizations and Religious & Clergy
- Pharmaceutical & Medical Devices
- Product Liability
- Professional Liability
- Professional Regulation & Licensure
- Qui Tam
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- Trucking
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