



# Employment Law Update

## 2022 Iowa Legislative Update

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# I. COVID-19 Workplace Issues in Iowa

- House File 902, signed by Reynolds on 10/29/21
- Vaccine passport ban

# Vaccine Passport Ban

- Signed May 20, 2021 – House File 889 – effective immediately
- Prevents most Iowa businesses and nonprofit entities from requiring invitees to present or furnish proof of having received a vaccination for COVID-19 prior to entering “on the premises” of the entity.
- The law also states that it is not intended to prohibit an entity from implementing a COVID-19 screening protocol that does not require proof of vaccination.
- The language is not clear—but legislative aides assured lobbyists that it was not intended to cover employees.
- This law is silent as to vaccine mandates.

# Iowa House File 902

- House File 902 – signed 10/29/21 – effective immediately
- Employers shall waive vaccine mandate if employee provides:
  - Statement that it would injure their health or welfare or that of someone residing with them.
  - Statement that it would conflict with the tenets and practices of a religion of which the employee is an “adherent or member.”

# Iowa House File 902

- Refusing the COVID vaccine is not a disqualification for unemployment benefits.
- The employer who terminated will be charged.
- Prior employers will not be charged.

# Iowa House File 902

- It appears to make exemptions easier.
- Employers shall waive the vaccine requirement if the employee requests a waiver and submits:
  - Statement that the vaccine would be injurious to the health and well-being of the employee or an individual residing with the employee.
  - Statement that receiving the vaccine would conflict with tenet or practice of religion of which s/he is a member.

# Questions Raised by 902

- Can employers terminate for failing to test as an alternative to vaccinating? And if so, is the employee eligible for unemployment?
- Can the employer require additional medical information for medical/ADA exemption, consistent with federal law?
- Are we going to see wrongful discharge cases if an employer violates this? Or just unemployment awards?

## II. Medical Marijuana in Iowa

- Iowa Code Chapter 124E
- Amendment of Iowa Code Section 730.5, which covers private sector workplace drug testing
  - Continues to be very limited medical use statute
  - Must obtain medical certification



# Medical Marijuana in Iowa

- Must be certified by a health care practitioner as having a debilitating medical condition (from a list of conditions)
- Must have a CBD registration card issued by the Medical Cannabidiol Board – \$100 fee
- Limited to 4.5 grams of THC every 90 days (no longer required to be low THC counts in sold products)
- Current legislature is very unlikely to expand marijuana laws in Iowa
- Unlike other states, Iowa employers can still have zero tolerance policies
- CAVEAT: Federal ADA may impact in some cases

## III. Iowa Workers' Compensation Update

A refresher for purposes of clarity for the rest of the discussion

# Is It Compensable?

- Is there an employer-employee relationship?
- Is there an injury?
- Did it arise out of the employment?
- Did it occur in the course of the employment?
- Do you have any defenses against the claim?

# Benefits

- Medical – 85.27 – Employer must provide reasonable and necessary medical care
- Temporary Total Disability – 85.33(1) – Paid when off work entirely due to injury
- Temporary Partial Disability – 85.33(2) – Paid when working fewer hours or earning less
- Healing Period 85.34(1) – Similar to TTD, but for permanent injuries

# Benefits – Permanent Benefits

- PPD What is owed?
  - Scheduled Members – 85.34(2)
  - Paid based on a schedule
  - Get impairment rating based on 5th Edition AMA Guidelines of Permanent Impairment assigned by doctor
- Pay functional rating assigned by the physician
- The commission must adopt a rating, cannot choose its own rating using its own discretion

# Industrial Disability 85.34(2)(u)

- Designed to compensate for lost earning capacity
  - Body as a whole = 500 weeks
  - Payable beginning at MMI
  - If employee has returned to same job/earnings, then pay only functional rating
  - If employee has not returned to same job/earnings due to the injury, then multifactorial analysis for industrial disability

# Industrial Disability Analysis

- Severity of permanent restrictions
- Extent of medical care and length of healing period
- Functional impairment rating
- Age, education, qualifications, ability to speak English
- Motivation and efforts to return to work
- Employer's ability to reemploy the employee
- Earnings prior to and subsequent to injury
- Medical condition prior and subsequent to injury
- Other unrelated medical conditions
- Loss of income from job loss or transfer

# Current Issues in Iowa Workers' Compensation

- Current procedures due to COVID
- What is a “shoulder”?
- Industrial disability cases post-2017 amendments
- COVID-19 cases
- Case update



# Current Procedures

- In an order entered by the commissioner on 11/29/21, the suspension of in-person hearings through **April 29, 2022**
- Hearings have been held by videoconference since March 13, 2020, through CourtCall – at no cost to participants.
- Parties may file a joint motion, at least 7 business days before the hearing date, to request an in-person hearing in the Des Moines offices.
- The presiding deputy commissioner may still permit individual witnesses to testify by video or phone.
- Parties have a duty to notify the commission promptly if a hearing participant develops COVID or has had close contact with a positive person; then hearing will be switched to remote.
- The commission can reject the in-person hearing if they don't have a room available.

# What Is a Shoulder?

- History of shoulder cases prior to 2017 legislative change
- 2017 legislation changed 85.34(2)(n)
- The loss of a shoulder is now a scheduled member injury. Therefore, compensation for the loss of shoulder is no longer determined by the loss of the employee's earning capacity.
- Now it is based on a scheduled member amount of 400 weeks.

# What Is a Shoulder?

- The statute is less than clear, so it has been interpreted through a number of cases.
- Chavez – 4/29/21 – Held that a full thickness rotator tear that had “retracted to the level of the glenoid, severe AC arthrosis, tendonitis and tearing of the biceps tendon” was a “shoulder” injury (currently on appeal to Iowa Supreme Court)
- Deng – 5/21/21 – Involved a glenoid labrum and infraspinatus injury. On appeal commissioner held that the muscles of the rotator cuff are included in the shoulder – so both the glenohumeral joint and the surrounding muscles, tendons, bones and surfaces are intricate and intertwined, and all included in the shoulder

# What Is a Shoulder?

- Bolinger – 6/17/21 – Deputy commissioner held claim that involved not only the muscles of the shoulder, but also the muscles of the back (rhomboids, serratus and trapezius) so it was a “body as a whole” claim. This case settled on appeal
- Bautista – 7/7/21 – Worker argued that since the shoulder injury required a distal clavicle resection, it should be considered “body as a whole” – held that the distal clavicle is closely intertwined with the glenohumeral joint and was a shoulder-only injury
- Anderson – 9/2/21 – Worker had permanent injuries to both the shoulder and the arm – held to be compensated as a “body as a whole” because it was an injury to two separate scheduled members

# What Is a Shoulder?

- Expect the cases to continue to develop and refine what is included, and when it switches back over to a “body as a whole” case.
- But the number of shoulder cases has significantly declined since the statutory change.

# Industrial Disability Cases After 2017

- 85.34(2)(v) was amended to state that in industrial disability cases, if the employee was offered work after the injury at the same or greater pay, then the employer only needs to pay the functional rating from the doctor, and not benefits based on reduced earning capacity
- Created a HUGE incentive for employers to return employees back to work
- BUT if the employee “is terminated from employment by that employer” then the employee can file a Review-Reopening and seek to get industrial disability benefits
- The statute doesn’t contain a time limit, nor is it clear if it applies to all types of terminations, voluntary resignations, etc.

# Industrial Disability Cases After 2017

- Martinez case – Decided by Polk County court on judicial review, 4/21/21
- Worker returned to work after a body as a whole injury, but with a different employer, earning as much or more than he earned at the time of the injury. He had voluntarily resigned from the first employer.
- The commissioner held that he was entitled to industrial disability benefits.

# Martinez Case

- Martinez Case – Appealed to District Court, which found:
  - The first employer offered him a position at the same or greater pay, so he could only receive functional disability rating assigned by the doctors and not loss of earning capacity.
  - He later voluntarily resigned, and *was not terminated by the employer*.
  - He found employment from *another employer at greater pay*.
  - Therefore, the new language applied, and he could only receive the functional disability rating. (Note: He suffered injuries to three different body parts, so they were combined and awarded based on 500 weeks.)



# COVID-19 Cases

- No decisions yet from the commission
- Is it an “occupational disease” or an “occupational injury”?
- Difference between the two

# COVID Cases – Immunity for Employers?

- Iowa passed Senate File 2338 in 2020 – COVID-19 Response and Back-to-Business Limited Liability Act
- Created some immunity for some businesses for COVID-19 exposure, for invitees onto a business's property. Creates a safe harbor if businesses comply with regulations, executive orders or public health guidance (IDPH, CDC)
- No liability unless can show:
  - Reckless disregard of a substantial and unnecessary risk
  - Intent to cause harm
  - Actual malice

# COVID Cases – Immunity for Employers?

- BUT this legislation has been interpreted by most experts as not covering workers' compensation liability
- Hasn't been challenged in the commission or in court

# COVID Cases – Investigation/Defense

- Investigating whether an employee with COVID-19 contracted it through their employment
  1. When did they first experience symptoms?
  2. Walk backward through all activities and exposures during the prior 2 weeks, concentrating on the prior 3–7 days
  3. Need exact dates/times of various exposures, whether the person had symptoms or tested positive
  4. Symptoms usually begin by day 5 after exposure, but with omicron, it is suspected to be shorter: 2–3 days after exposure

# COVID Cases – Investigation/Defense

**What symptoms does the employee have? Symptoms of COVID have been changing with new variants, but include:**

- Fever, chills
- Cough
- Shortness of breath
- Fatigue
- Congestion/runny nose
- Muscle or body aches
- Headaches
- Loss of taste and or smell
- Sore throat
- Nausea/vomiting/diarrhea

**Have they tested positive? PCR or antigen test?**

# COVID Cases – Investigation/Defense

- Is the employee vaccinated? Boosted? If so, when?
- If tested for COVID, how many times, dates, which types of tests?
- Was the employee notified of exposure from someone else?
- Did the employee develop symptoms with no known exposure?
- KEY – Can they identify a person they have been in close contact with during the course of their employment who has tested positive?
  - If so, what dates were they exposed to that person?
  - Length of time with that person? Masked? Distanced?
  - Size of room, any physical contact (shake hands, hug)?

# COVID Cases – Investigation/Defense

- What was the infected person doing? Did they appear ill?
- Did the employee share any materials with the infected person (pens, computers)?
- Did the employee share a meal with the infected person (lunch, unmasked)?
- Were other people also exposed? Did they test positive or develop symptoms?

# COVID Cases – Investigation/Defense

- Any potential exposure outside of work?
- Was the employee in close contact with anyone outside of work who tested positive or showed signs?
- Who lives with the employee? Ages? What do they do outside the home (school, college, work, travel, social activities)? Any household members show symptoms or test positive? Who is vaccinated?
- Has the employee had people in their home that were unmasked (think holiday gatherings, parties)?
- Has the employee attended any social functions involving multiple people (parties, sporting events, concerts)?
- Has the employee traveled? If so, how, where and when?
- Does the employee have any friends who have tested positive or showed symptoms?  
If so, detail exposures.



# COVID Cases Issues

- No decisions yet
- Will it be an occupational injury or disease?
- MMI date will be difficult to determine in some cases
- What about “long haulers”? Symptoms include brain fog, fatigue, muscle weakness, joint pain, long-term lung symptoms
- PPD? How will it be determined? Experts in determining PPD are still unsure

# THANK YOU!



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