

# Basic Concepts and Definitions



# BASIC DEFINITIONS AND CONCEPTS



- Who is a covered worker?
  - 72-203. Employments covered. This law shall apply to all public employment and to all private employment including farm labor contracting not expressly exempt by the provisions of section 72-212, Idaho Code.

# Independent Contractor



- Essentially, independent contractors are not considered employees
- Four factors to look at: 1. right to control times, manner and method of work being done; 2. method of payment; 3. furnishing tools and equipment and 4. right to terminate employment

# Exemptions from coverage 72-212



- Household domestic service
- Casual employment
- Employment of outworkers
- Employment of members of an employer's family dwelling
- A pilot of an airplane involved in crop dusting
- Associate real estate brokers, salesmen and commission paid helpers
- Volunteer ski patrollers
- Officials of athletic contests involving secondary schools

# Does illegal status preclude coverage?

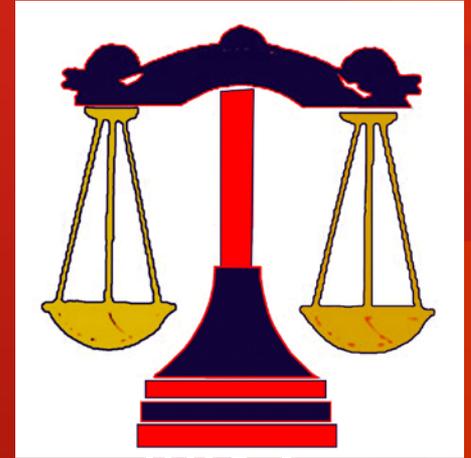
- Short answer: No. 72-204(2) A person, including a minor, whether lawfully or unlawfully employed, in the service of an employer under any contract of hire or apprenticeship, express or implied, and all helpers and assistants of employees whether paid by the employer or employee, if employed with the knowledge, actual or constructive, of the employer.

# Longer Answer

- Whether illegal status precludes entitlement to additional benefits (disability income benefits) is another question.
  - Industrial Commission has stated that if a Claimant cannot legally work in the United States subsequent to the subject accident, then the physical impairment which would otherwise entitle the worker to disability benefits is irrelevant. *Diaz v. Franklin Building Supply, 2009*



# Idaho Supreme Court...



- *Serrano v. Four Seasons Framing*, 2014
  - Justice Jim Jones and Justice Roger Burdick special concurrence hinting that they would side with Commissioner Baskins



# Definitions of Injury and Disability



- Injury: A personal injury, caused by an accident, arising out of an in the course of employment. Occupational diseases are not included in this definition
- Course and Scope of Employment: Injury is considered to be in the course of employment if the worker is doing the duty that they were hired to perform. An injury is considered to arise out of employment when a causal connection exists between the circumstances under which the work must be performed and the injury of which the claimant complaints

*Vawter v. UPS*  
*and ISIF*, 155  
Idaho 903  
(2014)



Definition of  
Disability:

The  
employee's  
decreased  
wage earning  
capacity



# Benefits Available : Medical- 72-432



- Medical Services, Appliances and Supplies
  - Employer shall provide reasonable medical treatment required by the employee's physician or needed immediately after the injury. If the employer fails to do so, the employee may do so at the expense of the employer

# Medical Benefits...continued

- If employer has designated a company physician, this information should be made available to all employees



- Employer shall furnish necessary replacement or repairs of appliances and prostheses
- Employee may petition for a change of physician

# Medical Benefits...continued

- Any employee who seeks medical care in a manner not provided for by the statute shall not be entitled to reimbursement for costs for such care



- An employee is not responsible for payment of any covered medical expenses, except for charges for personal items requested by the employee for his convenience
- Statutes allow for reimbursement of the Claimant's expense of necessary travel in obtaining medical care (first 15 miles of travel are not reimbursable)

# Medical Benefits continued



- *Chavez v. Stokes, July 2015*
  - Claimant injured when his finger slipped into the chain of a motor on an irrigation line. Was life-flighted from Fruitland area to St. Als in Boise. Billed \$21k. Employer contended transport was unreasonable. Commission and ISC both determined that it was reasonable.

# Idaho Supreme Court



- Kelly v. Blue Ribbon Linen Supply-  
November 2,  
2015



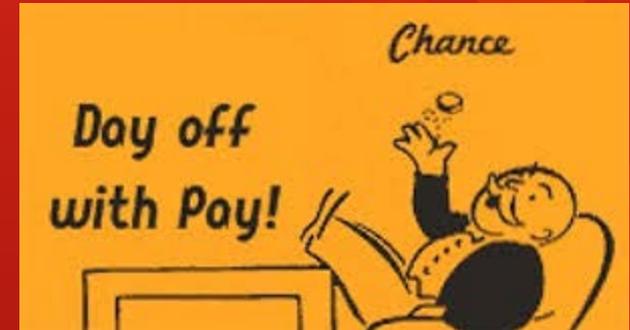
# Benefits Available



Waiting period: injured employee shall not be allowed income benefits for the first five days of disability from work, unless the employee's disability exceeds two weeks or the employee is hospitalized as an in-patient.



# Benefits Available: Income Benefits



- TTD: Total Temporary Disability Income Benefits
- Partial Disability Income Benefits

# Income benefits...continued: Permanent Impairment



- 72-422. Permanent impairment. "Permanent impairment" is any anatomic or functional abnormality or loss after maximal medical rehabilitation has been achieved and which abnormality or loss, medically, is considered stable or nonprogressive at the time of evaluation. Permanent impairment is a basic consideration in the evaluation of permanent disability, and is a contributing factor to, but not necessarily an indication of, the entire extent of permanent disability.

# Income Benefits...continued: Disability in Excess of Impairment (PPI)

- 72-423. PERMANENT DISABILITY. "Permanent disability" or "under a permanent disability" results when the actual or presumed ability to engage in gainful activity is reduced or absent because of permanent impairment and no fundamental or marked change in the future can be reasonably expected.
- Both Medical and Non-Medical Factors Weighed
  - Non medical: age, geographical area, sex, education, work experience, skills



# Income Benefits Continued: Total Permanent Disability

- 72-407: total and permanent loss of sight in both eyes, loss of both feet at or above the ankle, loss of both hands at or above the wrist, loss of one hand and one foot
- Or if Claimant proves prima facie case by proving unavailability of suitable work
- 2 ways: 1. by virtue of the accident alone or 2. by virtue of incorporating ISIF into the case
- Benefits: Statutory benefits are monthly lifetime payments based on the minimum/maximum comp rates



# Income Benefits...continued: Death Benefits



- 72-701: Dependents are required to file a written claim for death benefits within one year from the date of death
- 72-413: Death must result from the accident or occupational disease within 4 years. A claim for death benefits must be made within one year from the date of death
- 72-102: Burial Expense up to \$6000

# Occupational Disease v. Injury

- 72-102(22): Occupational Disease is a disease due to the nature of an employment in which the hazards of such disease actually exist, are characteristic of, and peculiar to the trade, occupation, process or employment. Does not include psychological conditions
- Date of injury = date of manifestation



# Occupational Disease

- Statutory examples of occupational diseases: poisoning by lead, mercury, etc, dermatitis, cardiovascular or pulmonary diseases of paid firemen, AIDS in occupations involving exposure thereto





# Evaluation by doctor/vocational expert

**McHUMOR.com** by T. McCracken



"Off hand, I'd say you're suffering from an arrow through your head, but just to play it safe, I'm ordering a bunch of tests."

# Ongoing Requests for Treatment



# Instituting Litigation



# Preparation and Presentation of Medical Proof to Establish or Refute Claims

- Medical Records
- IMEs
- Deposition testimony of Physician
- Letters from treating providers
- Pictures/videos of Claimant
- Statements regarding future expenses



# Settlement Implication, lump sum/without present value computation

- Present value is always less than the future value because money has interest earning potential. Therefore, it can incentivize the Claimant to settle a claim to have the money to invest.
- Lump sums are important to some Claimants because lifetime benefits are not inheritable
- Settlement vs. Commission Determination

Questions?





# Workers' Compensation in Idaho

## The Basics and Issues for the Non-Comp Practitioner

Matthew J. Vook, Field Counsel  
Liberty Mutual Insurance





# Overview

## Objectives:

- **The workers' compensation system in Idaho**
  - **Reporting industrial injuries**
  - **Common scenarios**
  - **Case law update**
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# Workers' Compensation

- **Brief history of workers' compensation**
  - “The Grand Bargain”
- **Idaho Code Title 72**
  - IDAPA 17
- **The Industrial Commission is the state regulatory agency for the workers' compensation system in Idaho**
  - Administrative agency role
  - Acts as the court system for workers' compensation
    - Appeals from Industrial Commission go directly to Idaho Supreme Court

# Principles of Workers' Compensation



- **No fault**
- **No negligence**
- **No pain/suffering**
- **Exclusive remedy**



# Types of Benefits

- Medical benefits
  - Includes mileage for appointments
- Temporary disability benefits
  - Subject to waiting period
- Permanent Impairment/Permanent Disability
  - PPD and total perm
- Benefits for Death

# The Employer's Role in Workers' Comp

## 72-602 Employers Notice of Injury

- (1) For injuries requiring medical treatment or one or more days from work, a First Report of injury must be filed no later than ten (10) days after the occurrence
- (5) Refusal to file an injury report is a misdemeanor





# Reporting

- **IDAPA 17.02.07.11.04** : Filing not an admission of liability or conclusive evidence of any fact stated therein
  - **72-604**: Failure to Report tolls employee statute of limitations
  - **72-706 (2)**: When compensation paid, then discontinued, employee will have 5 years from the date of injury to file a Complaint with the Commission requesting award of additional income benefits
  - Adverse consequences can occur if an injury is not reported timely
- 



## Reporting (Cont.)

- Medical treatment is any treatment by a physician under the Workers' Compensation statutes' definition of a physician
- **72-102:** A physician means medical physicians and surgeons, ophthalmologists, otorhinolaryngologists, dentists, osteopaths, osteopathic physicians and surgeons, optometrists, podiatrists, chiropractic physicians, and members of any other healing profession licensed or authorized by the statutes of this state to practice such profession within the scope of their practice as defined by the statutes of this state and as authorized by their licenses

# Defenses to Compensability

- **72-208 Injuries not covered – Willful Intention**

**(1) Willful Intention – No compensation if an employee willfully injures himself**



# Defenses to Compensability

- **72-208 Injuries not covered – Intoxication**

(2) Reasonable and substantial cause of injury, then no income benefits are paid (Unless the employer provides intoxicants or knows of intoxication and allows employee to remain at work)

(3) Intoxication by prescribed drug does not apply



# Ways to Limit Exposure

- Medical Only vs. Time Loss
- Offer Light Duty Opportunities
  - If you have none, consider paying your employee to volunteer at a reputable charity
  - Remember, it must be reasonable and should be written





# Employer Scenarios

- Reasonable offer of light duty work
- Employee quits light duty work that is offered
- Termination of employment by employer
  - Does the reason matter?
  - Tantamount to a refusal of light duty
- Workers' compensation settlement considerations
  - Accident is broadly defined – settlement could equate to double exposure



# Case law update

- Recent Supreme Court cases
  - *Chavez v. Stokes*, 158 Idaho 793, 353 P.3d 414 (2015)
  - *Mayer v. TPC Holdings, Inc.*, 2016 Ida. LEXIS 140 (May 3, 2016)
- Recent Industrial Commission cases
  - *Beard v. Donahue McNamara Steel, LLC*, 2014 ID Wrk. Comp. LEXIS 21
  - *Millard v. ABCO Construction, Inc.*, 2015 ID Wrk. Comp. LEXIS 382

*Chavez v. Stokes*, 158 Idaho 793, 353 P.3d 414 (2015)



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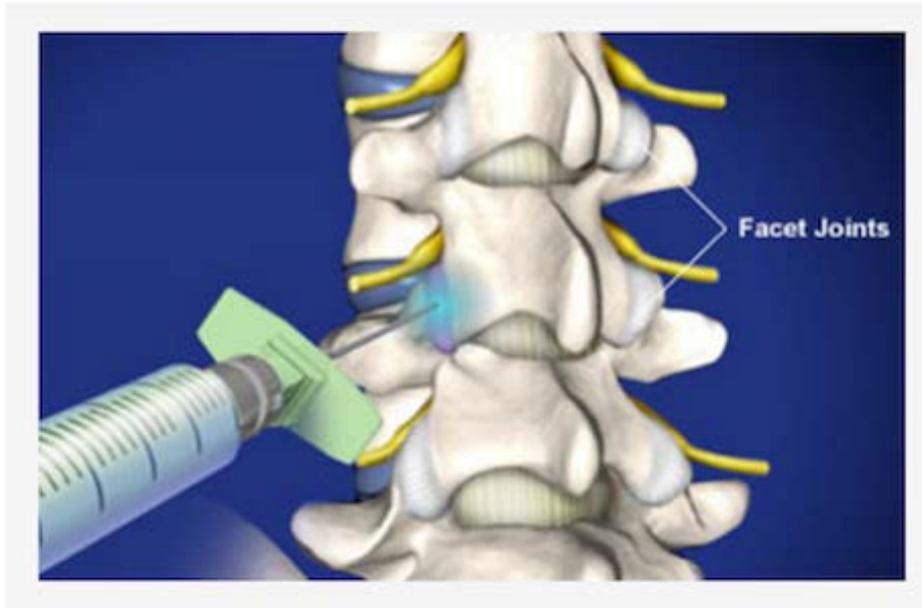
GRRR... I WANT BRAINS...  
AND PPD PAYMENTS!



*Beard v. Donahue McNamara Steel, LLC,*  
2014 ID Wrk. Comp. LEXIS 21



*Millard v. ABCO Construction, Inc.*, 2015 ID  
Wrk. Comp. LEXIS 382





# Questions





# Resources

- [www.iic.idaho.gov](http://www.iic.idaho.gov)
- Industrial Commission Benefits Dept.: 208-334-6000
- CIWCS Class – put on by the IC several times a year
  - I highly recommend this class if you are wanting to practice in WC



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