WORKERS' COMPENSATION BASICS

I. Basic Definitions and Concepts

A. Covered Employee

Iowa Code §§ 85.1(3) and 85.61(11) explain who is a covered employee under the statute. Generally it is a person who works under an express or implied contract of service for an employer. Certain persons are specifically excluded from the definition of employee. One whose employment is purely casual and not for the purpose of the employer's trade or business is excluded, as are independent contractors and owner-operators. Proprietors, limited liability company members, limited liability partners, and partners who have not elected coverage are not employees. However those who are actively engaged in their business on a substantially full-time basis may elect to be covered. Section 85.1(3) sets forth when persons engaged in agriculture are or are not covered by Iowa's workers' compensation law.

B. Covered Injury

A personal injury covered by the workers' compensation statute includes physical injuries, mental injuries, or a combination. It cannot be the result of the "natural building up and tearing down of the human body," but because of a traumatic or cumulative injury to the health/body of an employee. *Perkins v. REA of Iowa, Inc.* 651 N.W.2d 40 (Iowa 2002). Chapter 85 governs personal injuries including death, but does not include a disease unless it results from the injury. Iowa Code §85.61(4). Chapter 85A applies to occupational diseases. (Brucellosis and pneumoconiosis, exposure to chemicals used in a production process, occupational asthma.)

C. Arising Out of

The employee must prove by a preponderance of the evidence that the alleged injury "arose out of" the employment. This phrase refers to the cause or source of the injury. There must be a causal relationship between the injury and the employment, and the injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. *Ciha v. Quaker Oats Co*., 552 N.W.2d 143 (Iowa 1996); *Miedema v. Dial Corp*., 551 N.W.2d 309 (Iowa 1996); *Koehler Electric v. Wills*, 608 N.W.2d 1 (Iowa 2000).

In *Miedema*, the Iowa Supreme Court found there was no causal connection between the injury a worker suffered while using the toilet and his employment. In *McIlravy v. N. River Ins. Co.*, 653 N.W.2d 323 (Iowa 2002), a knee injury that occurred as the employee was walking across a level floor was not compensable. A neck injury occurring when the employee straightened up after bending over to sign an invoice was found not compensable in *Gilbert v. USF Holland, Inc*., 637 N.W.2d 194 (Iowa 2000). However, in *Lakeside Casino v. Blue*, 743 N.W.2d 169 (Iowa 2007) an injury was found compensable when the employee stumbled down stairs in the workplace.

An injury that occurs without trauma attributable to the employment is termed an "idiopathic injury". Iowa has adopted the "actual risk" rule, which makes no comparison between risks faced by the employee and those faced by the general public. *Hanson v. Reichelt*, 452 N.W. 2d 164 (Iowa 1990); *Benco Mfg. v. Albertsen*, 2009 WL 249 647 (Iowa App. 2009). In *Benco*, the claimant fainted, which was a risk personal to her. However, her claim was found compensable as the employment aggravated her idiopathic injury because she struck a cement wall after she fainted, which wall was found related to the working environment.

D. In the Course of

This phrase refers to the time and place of employment. "In the course of" includes injuries to employees whose services are being performed on, in, or about the premises which are occupied, used, or controlled by the employer. It also includes injuries to employees engaged elsewhere where the employer's business requires their presence and subjects them to danger incident to the business. Iowa Code §85.61(7). As a general rule injuries occurring off the employer's premises while going to and from work are not compensable. However the numerous exceptions have almost swallowed up this rule. For example, if the employee has a dual purpose of performing a personal errand as well as an errand for the employer, the injury will be compensable. An injury occurring while the employee is operating employer-furnished transportation is compensable. In *Waterhouse Water Conditioning, Inc. v. Waterhouse*, 561 N.W.2d 55 (Iowa 1997), the estate's claim for the death of an employee killed while riding a bicycle to work was deemed compensable as the employer provided a vehicle for the employee to use, and the employee was riding his bicycle because the van was being repaired.

An injury that occurs while an employee participates in social activities is compensable when the employer "derives substantial direct benefit from the activity beyond the intangible value of improvement in employee health and morale." *Briarcliff College v. Campolo,* 360 N.W.2d 91 (Iowa 1984). In *Campolo,* a professor's injury during an intramural basketball game on the college campus was compensable because it helped with student recruitment. However, in *Gazette Communications v. Powell,* 2010 WL 3894609 (Iowa App. 2010), injuries sustained while an employee attended a bowling event arranged by an employee activity committee was not compensable, as the activity's sole benefit to the employer was employee morale and camaraderie.

E. Proximate Cause

In the workers' compensation context, a cause is proximate if it is a substantial factor in bringing about the injury. It need only be one cause – it does not have to be the only cause.

F. Preexisting Condition and Aggravation

An employee is not entitled to compensation for the results of a preexisting injury or disease. However, the existence of a preexisting condition at the time of a subsequent injury is not a defense. If that preexisting condition is materially aggravated or worsened so that it results in disability, the employee is entitled to recover.

G. Cumulative Injury

In *McKeever Custom Cabinets v. Smith*, 379 N.W.2d 368 (Iowa 1985), the Iowa Supreme Court adopted a cumulative injury rule for injuries that come on gradually. A cumulative injury is manifested when theemployee, as a reasonable person, would be plainly aware that they suffer from a condition or injury and the condition is serious enough to have an adverse impact on the employee's employment or employability. *Herrera v. IBP, Inc*., 633 N.W.2d 284 (Iowa 2001). It is only upon the occurrence of both that that statute of limitations begins to run.

H. Statutes of Limitation

The normal two-year statute of limitations from the date of injury generally applies to worker's compensation claims. However, the Iowa Supreme Court applied the discovery rule in *Orr v. Lewis Central School District*, 298 N.W.2d 256 (Iowa 1980), where it held that the two-year period does not start running until the employee knows his injury is "both serious and work-connected." *Orr.* The discovery rule has been applied even with a specific/traumatic injury. In *Perkins v. HEA of Iowa, Inc*., 651 N.W.2d 40 (Iowa 2002), the employee had a needle stick but did not discover that her injury impacted her employment or employability until five years later, when she tested positive for Hepatitis C.

If an employee has been paid weekly benefits, the statute of limitations is extended to three years from the date of the last payment of weekly compensation benefits. Iowa Code §85.26(1). If an award of weekly payments has been ordered or an agreement for settlement has been entered, the employee may file a review-reopening action within three years after the last payment of weekly benefits made under the award or settlement. In a review-reopening action, the employee must prove that her current condition warrants an increase in compensation, such as when showing a worsening of her physical condition or a decrease of earning capacity. *Kohlhass v. Hog Slat, Inc.*, 777 N.W.2d 387, (Iowa 2009). Employers may also file for review-reopening, seeking a decrease in the award of benefits. In *Nelson v. City of Davenport*, File No. 5027474 (Dec. 2/24/12), the City was successful in getting a permanent total award lowered based on surveillance and medical opinions obtained after the initial award was made.

If an issue arises regarding the correct date of injury, the Agency has broad discretion when fixing the dates. *George A. Hormel & Co. v. Jordan*, 569 N.W.2d 148 (Iowa 1997).

II. Benefits Available

A. Medical Expenses

Iowa Code §85.27 requires the employer to furnish reasonable medical care, including surgical, dental, chiropractic, physical rehabilitation, and prosthetic devices. A modified van can constitute an appliance under the statute. *Manpower Temporary Service v. Sioson*, 529 N.W.2d 259 (Iowa 1995). There the employee needed a specially equipped van to accommodate her wheelchair.

If a dispute arises regarding the reasonableness of a charge for medical services the medical provider may not seek payment from the employee. Further, no collection action may be instituted by a medical provider while a disputed claim is pending. §85.27(6).

The employer/insurer has the right to choose the medical providers so long as it has accepted the claim as compensable. If an authorized treating physician refers the employee to another doctor, that doctor is also deemed to be authorized, and the employer cannot refuse to pay for that care. *Mussman v. Illinois Culvert & Supply*, File No. 5031486 (Alt. Med. Care Dec. 8/26/11).

Employees are entitled to lifetime medical benefits for treatment related to the work injury. The Agency may at any time make a determination and order concerning entitlement to benefits set forth in Iowa Code §85.27 if an award for payments has been made, an agreement for settlement has been reached, or if a denial of liability is not filed by the employer/insurer with the Agency within six months of the commencement of weekly benefits. Iowa Code §86.26(2).

If an employee is dissatisfied with the care the employer has chosen, the employee may file an alternate care petition. An employee's dissatisfaction with care must be communicated to the employer/insurer prior to filing for alternate medical care. The failure to do so will result in a dismissal of the petition. *Shuman v. Team Staffing Solutions*, File No. 5035855 (Alt. Med. Care Dec. 7/28/11). The fact that an employee had a favorable experience with another physician and the physician chosen by the employer/insurer did not want to work with claimant's counsel was found not sufficient to transfer care. *Machmueller v. Dep't of Human Services*, File No. 5037294 (Alt. Med. Care Dec. 7/08/11). The employee's alternate medical care petition was granted in *Mussman*, where the employee's authorized physician strongly recommended a neuropsychological evaluation. In its decision, the deputy noted the long line of cases holding that an employer cannot disregard treatment recommendations from an authorized treating physician.

B. Temporary Weekly Benefits

1. Temporary Total Disability Benefits

When an injury does not result in a permanent impairment, the employee is paid temporary total disability benefits until the employee returns to work or is medically capable of returning to employment substantially similar to that performed at the time of the injury, whichever occurs first. Iowa Code §85.33.

2. Temporary Partial Disability Benefits

Temporary partial disability benefits are paid when it is medically indicated the employee is not capable of returning to employment substantially similar to the employment performed at the time of the injury, but is able to perform other work within their restrictions. The amount of temporary partial disability benefits is 66-2/3 of the difference between the employee's weekly earnings computed under §85.36, and the employee's actual gross weekly income from employment during the period of disability.

These benefits plus wages are higher than an employee will obtain from temporary total benefits.

3. Healing Period Benefits

When an employee has suffered an injury causing permanent impairment, they are entitled to healing period benefits. These benefits are paid beginning on the first day of disability after the injury, until the employee has returned to work, has reached maximum medical improvement, or is medically capable of returning to employment substantially similar to that performed at the time of the injury, whichever occurs first. Iowa Code §85.34(1).

4. Light Duty Work

If an employee has been medically released to perform some work and the employer offers the employee work consistent with the medical release, the employee must accept that suitable work. A failure to accept such work will result in the termination of temporary total, temporary partial, or healing period benefits during the period of refusal. Once the employee refuses to return to the suitable work, the employer is not later required to make work available to enable the employee to again be paid benefits. *Carrillo v. Sam's Club*, File No. 5028491 (App. Dec. 7/13/11). An employee's termination for failing a drug screen test may not result in a termination of benefits. In *Edwards, Jr. v. Weitz Corporation*, File No. 5032285 (Arb. Dec. 6/22/11), claimant failed a drug test four days after his injury. Claimant was awarded healing period benefits as the Agency has held that a positive drug test and subsequent termination is not considered a voluntary quit. Further, before the employee is precluded from benefits he must be offered suitable work, which was not done in this case as claimant had already been terminated.

C. Penalty Benefits

If a denial of a claim, a delay in payment, or a termination of benefits occurs without "reasonable or probable cause" or excuse known to the employer/insurer at the time of denial, delay or termination, the Agency shall award benefits up to 50% of the amount denied, delayed or terminated. Iowa Code §86.13(4). In order to preclude an award of penalty benefits, the employer must prove it had a reasonable or probable cause or excuse for the nonpayment. In order to be considered a reasonable or probable excuse, the employer/insurer must conduct a reasonable investigation and evaluation, said investigation and evaluation must be the actual basis upon which the decision was made, and the employer/insurer must contemporaneously convey the basis of the decision to the employee. Iowa Code §§86.13(b) and (c). Penalty benefits were not awarded in *Edwards, Jr. V Weitz Corporation* because prior Agency case law had held that termination due to misconduct disqualified an employee from receiving temporary benefits. Penalty benefits were awarded where the weekly benefits had been paid on a biweekly basis in *Young v. Linco Seeds, Inc*., File No. 5027840 (App. Dec. 7/13/11). Additional penalty was awarded in *Young* for the delay in paying permanent partial

disability benefits where there was a clear functional loss of the left upper extremity. Significant penalty benefits were awarded in *MC&R Pools, Inc. v. Shea,* 2011 WL2420038 (Iowa App. 2011). Initially the employer had a reasonable basis for contesting the claim based on a medical opinion. However, a physician retained by the employer to perform an independent medical examination later repudiated the initial medical opinion. Upon receipt of the later opinion, the employer no longer had a good faith dispute over the compensability of the claim.

D. Permanent Disability Benefits

1. Scheduled Injuries

Scheduled injuries are those injuries to an employee's arms or legs or parts of the arms or legs. The compensation for scheduled injuries is listed in Iowa Code §85.34(2)(a)-(t).

2. Unscheduled Injuries

All other injuries are unscheduled, and compensated on the effect the injury has on the employee's earning capacity. Unscheduled injuries include those to the head, back, shoulder, hip, as well as mental injuries. Section 85.34(2)(u) provides that an employee who has an unscheduled injury "shall be paid during the number of weeks in relation to 500 weeks as the reduction in the employee's earning capacity caused by the disability bears in relation to the earning capacity that the employee possessed when the injury occurred." This is codification of the "fresh start" rule, which holds that the impact of a prior impairment on the employee's earning capacity is "water under the bridge," as the prior injury is deemed to be reflected in the employee's earnings at the time of the injury. In effect, the employee is considered being 100% able prior to the injury. This concept was applied in *Carlson v. Sioux City Community School Dist.,* File No. 5028667 (App. Dec. 8/15/11). The employee in *Carlson* had a prior work injury which limited her to working part-time while the second injury took away what was left of her remaining earning capacity. The employee was found to have a total loss for earning capacity, resulting in the employer being ordered to pay permanent total disability benefits.

Iowa Code §85.34(7) codifies a modified version of the "full responsibility" rule. Pursuant to this section and rule, an employer is fully liable for compensating all of an employee's disability that arises out of and in the course of the employee's employment with that employer. An employer is not liable for compensating an employee's preexisting disability that arose out of and in the course of employment with a different employer, or from causes unrelated to employment. Therefore, the full responsibility rule of this code section is limited to injuries that occur with the same employer. An employer/insurer is given credit for benefits that have been paid, for both scheduled and unscheduled injuries. Iowa Code §85.34(7)(b)(1). Therefore, if an injured employee has a preexisting disability that was caused by a prior injury with the same employer and the

preexisting disability was to the same scheduled body part as the present injury, the employer is liable for the combined disability that is caused by both injuries, in relation to the employee's condition just prior to the first injury. However, the employer's liability is considered to be partially satisfied to the extent the employee was previously compensated by this same employer.

The full responsibility rule is different for unscheduled injuries. If an employer is liable to an employee for combined disability payable under §85.34(2)(u) and the employee "has a preexisting disability that causes the employee's earnings to be less at the time of the present injury than if the prior injury had not occurred, the employer's liability for the combined disability shall be considered to be already partially satisfied to the extent of the percentage of disability for which the employee was previously compensated by the employer minus the percentage that the employee's earnings are less at the time of the present injury than if the prior injury had not occurred." Iowa Code §85.34(7)(b)(2).

In *Swiss Colony Inc. v. Deutmeyer*, 789 N.W.2d 129 (Iowa 2010), the Iowa Supreme Court held that an employer/insurer is only entitled to a credit for an overpayment of permanent disability benefits against future benefits owed for subsequent injury, and not against future benefits for the current injury. The Court based this decision on the wording of Iowa Code §85.34(5) which provides that if an employee is paid weekly benefits in excess of that required, "the excess paid by the employer shall be credited against the liability of the employer for any future weekly benefits due pursuant to subsection 2, for a subsequent injury to the same employee." This applies only to permanent partial disability benefits. The employer/insurer may still credit excess temporary total, healing period, or temporary partial disability benefits paid against permanent partial disability benefits. Iowa Code §85.34(4).

3. Permanent Total Disability Benefits

These benefits are payable during the period of the employee's life and total disability. Iowa Code §85.34(3).

4. Weekly Benefit Rate

The weekly benefit rate is generally 80% of the employee's gross weekly earnings at the time of the injury. They are almost always the same amount for temporary, healing period and permanency benefits. The rate does not change even if the employee's number of exemptions change or their wages change after the injury. Iowa Code §85.36 contains a list of ways the benefit rate is calculated. The most common method used is that set out in §85.36(6). An employee's average weekly wage is calculated based on the employee's earnings for the 13 weeks preceding the injury, using those weeks that most fairly represent the employee's customary earnings. Overtime hours are included but at the employee's straight time rate. The worker's compensation rate is further affected by the employee's marital status and the number of exemptions they have at the time of the injury. Therefore children born after the injury are not included. Once the average

weekly wage and exemptions are known, a chart on the Agency's website sets forth the weekly rate. If the employer/insurer pays at an incorrect rate lower than is owed, the employee is entitled to interest on the underpayment. It is important to accurately determine the correct weekly rate early on, as the employer/insurer is no longer entitled to a credit of any overpayment of permanency benefits in relation to the current injury claim.

E. Death Benefits/Survivor Benefits

Survivor benefits are payable to the surviving spouse for life or until remarriage. Upon remarriage, two years of benefits shall be paid to the surviving spouse in a lump sum – if there are no children entitled to benefits. If there are surviving children, those benefits are payable until the child has reached the age of 18 or up to the age of 25 if the child is enrolled as a full-time student in an accredited educational institution. If children are physically or mentalle disabled, they are entitled to benefits for life. Iowa Code §85.31. The Commissioner may enter an order for equitable apportionment when an employee leaves a surviving spouse and dependent child(ren). If the surviving spouse remarries and there are children, the payments shall be paid to the proper trustee for the use and benefit of the dependent child(ren). Sections 85.31, 85.43, and 85.44.

F. Burial Expenses

Section 85.28 requires the employer to pay reasonable burial expenses, not to exceed 12 times the statewide average weekly wage. The current average weekly wage is $728.29, resulting in maximum burial expenses owed of $8,739.48. This is to be paid in addition to the weekly death benefits.

G. Vocational Rehabilitation Benefits

An employee who has sustained an injury resulting in permanent partial or total disability, who cannot return to gainful employment because of that disability, is now entitled to a $100 weekly payment from the employer during each week the employee actively participates in a vocational rehabilitation program recognized by the vocational rehabilitation services division of the department of education. The maximum number of weeks during which the benefits are payable is 26 weeks. Iowa Code §85.70.

H. Second Injury Fund Benefits

If an employee has sustained a permanent injury to a hand, arm, foot, leg or eye, and later sustains another permanent injury to another member or organ, they are entitled to benefits from the Second Injury Fund. The Fund is liable for the employee's loss in earning capacity less the disability paid or payable for each of the two scheduled injuries. In *Second Injury Fund of Iowa v. Kratzer*, 778 N.W.2d 42 (Iowa 2010), Supreme Court held that the employee is entitled to Fund benefits even if the prior injury involves the member now alleged to be the second injury.

In *Kratzer*, the claimant's first injury was to both her right and her left leg. However she was paid benefits primarily for the injury to her right leg. Her second injury was to her left leg which was found to quality as the second injury.

III. Hearings & Appeals

Hearings are held in a number of venues, presided over by deputy commissioners. The Agency has its own rules addressing such matters as exhibits, the time for parties to submit exhibit and witness lists, and the length of hearings, among other matters. (Chapter 876 of the Iowa Administrative Code). The Rules of Civil Procedure apply unless they conflict with the Agency's rules and the statute, or are otherwise not applicable. Evidence that would not be admissible at a jury trial may be admissible at the hearing. Iowa Code §17A.14(1). Deputy decisions must be appealed to the Commissioner (or his designee) before they may be appealed further. Appeal from the Commissioner's appeal decision is to the district court in the district in which the case was heard or Polk County. While appeal to the Commissioner stays a judgment against an employer/insurer, a petition for judicial review to the district court does not. The grounds for judicial review are outlined in the Iowa Administrative Code, at §17A.19. A decision by the district court is appealable to the Supreme Court, and is handled the same as all other appeals in civil cases.

IV. Settlements

A. Contested Case/Compromise Settlements

These are the most common form of settlements, and used when the parties agree to settle for a lump sum payment for a full and final settlement of the claim, including ending the right to future medical care. These agreements bar the employee from any further action under the worker's compensation statutes for that injury. The settlement documents must include evidence of the dispute. The dispute may now be the extent of permanency or loss of earning capacity. The parties may also include language that states the settlement proceeds are intended to compensate the employee at a given weekly rate over their life expectancy. Such a settlement is not considered payment of weekly compensation, so as to extend the statute of limitations. The Agency will not approve any language in the settlement documents that attempts to settle anything other than the work injury at issue. §§85.35(3), (7), and (9).

B. Agreements for Settlement

These are infrequently used, as an employer/insurer can pay the permanency benefits and be entitled to a credit for the same without such a settlement. If such an agreement is entered into, the employee remains entitled to medical care. Further, as benefits paid under such an agreement do constitute the payment of weekly benefits, the settlement is subject to review-reopening for three years after the last weekly benefit is paid. §85.35(2).

C. Combination Settlement

The statute now allows the parties to enter into combination settlements, which combines

the compromise settlement with aspects of the agreement for settlement. These allow for resolution of part of the employer's/insurer's liability while also establishing their liability for another part of the claim. §85.35(4). These can be used if the employee has sustained an undisputed traumatic injury, but claims an injury to another body part for which liability is disputed or when the employee also asserts a mental injury.

D. Contingent Settlement

A settlement may be contingent upon another court or agency approving the settlement, or on an event occurring in the future, within one year of the settlement. §85.35(5). The parties enter into one of the above settlements, which is approved conditioned on the event or approval. If the subsequent approval is not received or event does not occur, the settlement may be vacated. These are frequently used in cases where the Centers for Medicare and Medicaid must approve a settlement when the employee is on Medicare or will be in a certain time period, or the settlement exceeds a certain amount. The statute does toll the statute of limitations if the settlement is vacated.

E. Extension of Medical Benefits

The parties to any of the above settlements may agree that the employee is entitled to medical benefits under terms and conditions as agreed to by them, for an agreed length of time. §85.35(6). During the time agreed on, the Agency continues to have jurisdiction to address any issues that arise as to the medical care to be provided the employee.

F. Approval by Agency

All settlement agreements must be in writing and submitted to the Agency for review and approval. If the employee is represented by an attorney, it is presumed that the settlement has satisfied the requirements set forth at §85.35(8), including a showing that the employee has knowingly waived their right to hearing and the settlement is a reasonable compromise.