



# SCHELDROP BLADES

## Major Changes Coming to Iowa Workers' Compensation! Reform Legislation Amended and Passed, Heads to Governor for Signature

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The Iowa Senate has passed the reform legislation as previously passed in the Iowa House. It now heads to Governor Branstad for his signature. This legislation is the most substantial reform to Iowa workers' compensation in decades.

We have included a list below with a brief explanation of the changes to current code.

If the workers' compensation reform legislation becomes law, Scheldrup Blades is prepared to provide you guidance of the new proposed changes. **We will be discussing these reforms at our complimentary April 6th Seminar (See more / register at no cost through our [event calendar](#) or contact [Loren Varney](#)).**

**Intoxication:** Amended Section 85.16(1) regarding intoxication creates a presumption of both intoxication and causal relationship to the injury if the employee has a positive test result for the presence of alcohol or drugs (including prescription drugs not prescribed by a medical provider or not taken in accordance with the prescribed use). Upon the employer's showing of a positive test result, the injured worker will be presumed to have been intoxicated at the time of the accident, and it will further be presumed that the intoxication was a cause of the accident. The employee has to rebut the presumption with evidence showing either (1) he/she was not intoxicated at the time of the accident; or (2) the intoxication was not a substantial factor in causing the accident. If the presumption is rebutted, the employee will be entitled to benefits. If the presumption is not rebutted, the employee will not be entitled to benefits.

**No Private Cause of Action against Employer for Contract that Violates Section 85.18:** Section 85.18 provides no employer may by rule, contract or otherwise relieve itself from liability for workers' compensation benefits. The amendment reaffirms the exclusivity rule and provides this section does not create a private cause of action in district court against the employer.

**Notice of Injury – Limitation of Action:** Amended Section 85.23 regarding notice now requires an injured worker to give the employer notice of a work injury within 90 days from which the employee knew or should have known that the injury was work-related, unless the employer has actual knowledge of the injury.

**Statute of Limitation Runs from Knowledge of Injury:** Amended Section 85.26(1) provides an employee has two years from the date of the occurrence of the injury to file a petition for workers' compensation benefits. The date of the occurrence of the injury is now defined as the date that the employee knew or should have known that the injury was work-related.

**Light Duty:** Amended Section 85.33 provides several changes. Subsection (a) was amended to allow an employer to offer light duty work outside the employer's business, for example, through a non-profit organization such as United Way or Goodwill.

Amendments to this subsection also create a presumption of suitability for light duty offers of work at the employer's place of business for employees whose jobs regularly involve travel, i.e., more than 50 percent of the work time is spent traveling.

Subsection (b) was amended to require the employer to communicate any offer of light duty in writing detailing the specifics of the offer. In turn, if the employee declines the light duty offer because it is not suitable, the employee must communicate in writing to the employer the reason for the refusal in order to challenge the light duty offer as unsuitable.

**Start of PPD:** Amended section 85.34(2) provides PPD does not start until an employee is at maximum medical improvement and the resulting impairment rating, if any, can be determined using the AMA Guides.

**Shoulder is Added to the Schedule:** Amended section 85.34(2) broadens the applicability of the schedule from the arm to include the shoulder.

**Industrial Disability PPD Factors:** Amended Section 85.34(2)(u) made several changes to the way PPD for industrial disability is evaluated. This section now requires the deputy to take into consideration the functional impairment and the remaining number of years the employee will work in determining loss of earning capacity.

It also provides that an employee who is partially permanently disabled, who is offered work or returns to work for the same or greater wages compared to pre-injury wages, is only entitled to PPD benefits based on functional impairment, i.e., the impairment rating, and not loss of earning capacity. However, if the employee is terminated, a review reopening can be filed to allow the employee to seek industrial disability benefits.

**Vocational Training:** Section 85.70 is amended to require a vocational assessment for anyone with a shoulder injury who cannot return to gainful employment to determine whether the employee would benefit from career retraining in specified areas to allow the employee to return to the workforce. If so, the employee shall be referred by workforce development to a community college (closest or one offering specific training) for completion of a program offering an associate's degree or certification. The employee has 6 months to enroll following the referral. The employer is obligated to financially assist the employee up to \$15,000, so long as the employee maintains regular attendance and above a passing grade in every class. Financial assistance includes payment for classes, course materials and supplies.

**Determining Functional Impairment for Scheduled Injuries:** Amended Section 85.34(2) provides that for any injury to a scheduled member, the employee's resulting functional impairment must be evaluated based solely on impairment rating(s) assigned using the AMA Guides. The amendment specifically prohibits lay testimony or agency expertise to be used in arriving at an award of functional impairment.

**Duplicate PPD and PTD Benefits Not Allowed:** Section 85.34(2) was amended to add new paragraph (x) providing that PPD benefits shall terminate on the date PTD benefits begin. It specifically restricts employees from receiving PPD and PTD benefits at the same time.

**Limitations on Permanent Total Disability Benefits:** Section 85.34(3) was amended to reiterate an employee cannot receive PPD and PTD benefits at the same time.

Additionally, subsection (c) was added which provides an employee shall not receive PTD benefits for any week in which the employee receives any wages or funds for current services in excess of 50 percent of the state-wide average weekly wage, which is currently \$843.00. Subsection (d) was also added, providing that an employee cannot receive PTD benefits at the same time he/she is receiving unemployment compensation benefits.

**Credits for Overpayment of TTD or PPD:** Amended section 85.34(4) provides an employer is entitled to a credit for any overpayment of TTD or TPD benefits as to any future weekly benefits owed (TTD, PPD or PTD) so long as the employer acted in good faith in determining and notifying the employee when the benefits are terminated. Amended subsection (5) provides an employer is entitled to a credit for any overpayment of any type of indemnity benefit as to any future weekly benefit owed for the current injury or any future injury.

**Apportioning Liability between Pre-Existing Conditions and Conditions Caused by Work:** Amended Section 85.34(7)(a) limits an employer's liability for only that portion of the employee's disability that is work-related and the subject of the claim for compensation. The amendment specifically provides employers are not liable for preexisting disabilities arising from prior work injuries with the employer if previously compensated. The statute further provides employers are not liable for preexisting disabilities unrelated to work or incurred working for some other employer. The amendment further deletes subparagraphs (b) and (c) related to successive disabilities now resolved in the amendments to subparagraph (a).

**Forfeiture of Benefits if Employee Refuses to Attend IME:** Amended Section 85.39(1) now provides an employee forfeits (rather than simply suspended) workers' compensation benefits for refusing to attend an IME at the employer's request.

**Obligated to Pay IME Fees for Compensable Claims and Reasonable IME Fees Only:** Amended Section 85.39(2) provides first that an employer is only obligated to pay for the Claimant's IME fee if the claim is compensable. Additionally, the amendment provides that employers are only obligated to pay reasonable IME fees, based on the typical fee charged by a medical provider to perform an impairment rating in the geographical area where the examination is performed.

**Commutations Require All Parties Consent and May Provide Specific Term for Medical Benefits:** Amended Section 85.45(1) now requires consent of all parties for any commutation of benefits. If all parties consent to a commutation, the amendment permits the parties to stipulate to the employee's entitlement to medical benefits for a specific period of time after the commutation.

**Jurisdiction Eliminated For Certain Iowa Residents:** Amended Section 85.71(1)(a) no longer affords jurisdiction to a resident of Iowa who is injured outside the state of Iowa solely because the employer has a place of business in the state, when the employee does not regularly work from that place of business.

**Posting Bond on Judicial Review to Avoid Payment of Agency Award:** Amended Sections 86.42 and the addition of paragraph 2 to Section 86.26 allows an employer to post bond on judicial review to stay enforcement of the agency award, and provides a process for the court to review the adequacy of the amount of bond if challenged by the employee.

**Claimant's Attorneys Not Allowed to Recover Fees on Voluntarily Paid Benefits:** Amended Section 86.39 adds subsection 2 which provides that a claimant's attorney cannot recover attorney fees on compensation voluntarily paid by the employer, and may only take fees from compensation that would not have been paid but for the attorney's efforts.

**Interest on Awards Reduced:** Amended Section 535.1(1) provides instead of 10 percent, interest due on workers' compensation benefits shall accrue at the annual rate equal to the one-year treasury constant maturity published by the Federal Reserve plus 2 percent, as of the date of the injury.

**Effective Date of Amendments:** The amendment to the section dealing with commutations is effective as of the date of enactment for any petition for commutation filed on or after that date. The remaining amendments are effective July 1, 2017. The amendments do not apply retroactively to injuries that have already occurred.

## ***Learn More***

Due to the widespread impact of this legislation, our attorneys at Scheldrup Blades are offering to host free webinars or on-site "lunch and learn" seminars at a location and time of your choosing to discuss the workers' compensation reform legislation.

We also will be discussing the reforms in-depth at our April 6th seminar in West Des Moines.

Please contact Loren at [lvarney@scheldruplaw.com](mailto:lvarney@scheldruplaw.com) to schedule a complimentary webinar or seminar, or to submit your complimentary registration to our April 6 Seventh Annual Workers' Compensation Law Seminar.

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