



The Workers' Compensation  
Law Seminar

# Evaluating Exposure and Claim Resolution

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# Evaluating Exposure

<https://www.youtube.com/watch?v=rTWwKvFfqIU>

# Evaluating Exposure

- What type of Injury?
  - Scheduled Member Injury
  - Body-as-a-Whole Injury (BAW)



# Evaluating Exposure: Scheduled Member Injury

- Loss of function (pre-July 1, 2017, injuries)
- Impairment Assigned (July 1, 2017, injuries)
- Loss of any 2 scheduled injuries (same incident) = 500 weeks
- The “new” shoulder: 400 weeks and defined as a scheduled member
- Second Injury Fund Complexity
  - Multiple parties;
  - Multiple injuries;
  - Difficult to achieve the “full and final”



Scheduled Member	Weeks Payable
Thumb	60
Index finger	35
Middle finger	30
Ring finger	25
Little finger	20
Hand	190
Arm	250
Great toe	40
Any other toe	15
Foot	150
Leg	220
Eye	140
Hearing (one ear)	50
Hearing (both ears)	175
Permanent Disfigurement, face or head	150

# Evaluating Exposure: BAW/Industrial Disability

- Factors to be considered:
  - Any change in the employee's earnings caused by the injury
  - Employee's ***medical condition prior to injury***, immediately after the injury and presently
  - The status of the injury
  - The injury's severity and the length of healing period
  - The ***work experience*** of the employee prior to the injury, after the injury and potential for rehabilitation
  - The employee's qualifications intellectually, emotionally, and physically
  - Age
  - Education
  - ***Motivation***
  - Functional impairment as a result of the injury
  - Loss of earnings caused by job transfer for reasons related to the injury
  - Inability because of the injury to engage in employment for which the employee is fitted

# Evaluating Exposure: BAW analysis for injuries post July 1, 2017

- The Agency will now have to ***consider how many years in the future the employee would reasonably be expected to work at the time of the injury***. This means that if an injured worker is nearing retirement, she may be awarded less than a younger worker with the same injury and functional impairments.
- If an employee is ***returned to work or is offered work for the same pay or higher***, the employee will only receive compensation for his or her functional impairment rating from the injury.
- If the employee is terminated, however, the law provides that he or she can petition for a review/reopening procedure. There is ***no*** statute of limitations to make this request.





# Claim Resolution



[https://www.youtube.com/watch?v=INbuofE\\_hms](https://www.youtube.com/watch?v=INbuofE_hms)

# Claim Resolution



<https://www.youtube.com/watch?v=Xg3dAmhFJdE>



# Claim Resolution

- Types of WC Settlements:
  - Agreement for Settlement per Iowa Code Section 85.35(2)
  - *Full and Final per Iowa Code Section 85.35(3)*
  - *Combination Settlement per Iowa Code Section 85.35(4)*
  - *Contingent Settlement per Iowa Code Section 85.35(5)*
  - *Full Commutation*
    - Open or Closed Medical Rights
- Global Releases:
  - Separation of Employment
  - Severance
  - Release of all liabilities
  - Voluntary Resignation

# Claim Resolution

- What type of resolution?
  - Full and Final, i.e., closed file.
  - Agreement for settlement, i.e., open file.
- Advantage of the Full and Final
  - No future liability
  - Claim can be closed
- Disadvantage of the Full and Final
  - Jeopardize credits against future injury
  - Claimant can argue “fresh start” of their loss of earnings



# Claim Resolution

- Advantage of the Open File
  - Remain in control of the medical care
  - Capture all credits
  - No “fresh start” for the employee’s loss of earning
- Disadvantage of the Open File
  - Claimant has review/reopening rights
    - 3 years to open indemnity benefits after the date of the last payment made
  - Lifetime medical\*
  - Claim administration

# Claim Resolution

- Other forms of settlement
  - Full Commutation
    - Pros: Maintain credit against future injury; close lifetime medical
    - Cons: Must have available weeks (10) to commute; claimant attorney rarely agree
  - Contingent
    - Pro: Can work out Medicare Set-Aside issues
    - Con: The settlement could fail if the contingency is not reached
  - Combination
    - Pro: Allows the parties to negotiate the worse part of the claim away
    - Con: Forces the parties to compromise on specific term

# Claim Resolution: Tips

- Always be pro-active
- Establish an interpersonal relationship
  - Be aware of upcoming events, expenses, and opportunities in the claimant's life that can serve as a mechanism to engage in settlement.
  - Empathy
- Attack future medical issues
- Know your authority
- Ask them the value "what do you





# Questions?

