

# MICHIGAN WORKERS' COMPENSATION CHECKLIST

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## I. DID EMPLOYEE SUFFER AN INJURY?

- A. Medical Questions
  - 1. Pre-existing work-related?
  - 2. Pre-existing non-work-related: *Rakestraw*
    - a. Employee has to show new work-related “medically distinguishable” condition
    - b. Change in pathology required (*Fahr*)
    - c. Must be evidence from which legitimate inference may be drawn that condition has pathologically changed (*Fahr*)
    - d. *Rakestraw* is limited to pre-existing *non-work-related* conditions (*Simpson*)
  - 3. **Significant** aggravation required (sec. 301) for
    - a. Conditions of aging process
    - b. Mental disabilities
- B. Fact Questions
  - 1. Reported promptly?
  - 2. Employer reps/witnesses
  - 3. Surveillance/informants

## II. DID INJURY ARISE OUT OF EMPLOYMENT?

- A. Going and coming generally not covered
- B. Parking lot covered
- C. On premises within reasonable time before or after working hours covered
- D. Travelling or special mission generally covered
- E. Deviation generally not covered
- F. Social or recreational not covered
- G. Personal fights generally not covered
- H. Horseplay generally covered

## III. IS EMPLOYEE DISABLED (LIMITATION OF WAGE EARNING CAPACITY—SEC. 301)?

- A. Able to still do entire job with restrictions?
- B. Able to do job with *de minimis* accommodation (*Sington*)?
- C. Able to earn as much as job at time of injury in previous employment or with transferable skills (*Sington* and *Stokes*)?
- D. Has employee established new wage earning capacity by working at least 100 weeks since date of injury?
- E. Retired from active employment and receiving non-disability pension/retirement benefits: presumed no loss of earnings (sec. 373)

## IV. MITIGATE WAGE LOSS EXPOSURE—REASONABLE EMPLOYMENT

- A. **Specific** written offer: job description, location, restrictions, rate of pay, starting date and time
- B. Use treater’s restrictions, if possible
- C. Employer openings?
- D. Vocational job placement—real openings offered
- E. *Sington*—one-time residual wage earning capacity evaluation as of time of injury—real openings identified, not necessarily offered
- F. Openings via classifieds, unemployment office, internet
- G. *Pulver*—“Reasonable employment”:
  - 1. Timing of the offer
  - 2. If employee has moved, reasons for moving
  - 3. Diligence of employee in trying to return to work
  - 4. Whether employee has actually returned to work with some other employer
  - 5. Whether effort, risk, sacrifice, or expense is such that a reasonable person would not accept offer
- H. Act section 301(9)—“Reasonable employment”:
  - 1. Within employee’s capacity to perform
  - 2. Poses no clear and proximate threat to employee’s health and safety
  - 3. Within a reasonable distance from employee’s residence
  - 4. Employee’s capacity to perform shall not be limited to jobs in work suitable to qualifications and training
- I. Wage benefit mitigation not applicable to specific loss, or total and permanent, injuries

## V. SPECIAL BENEFITS

- A. Specific loss (sec. 361)
- B. Total and permanent (800 weeks) (sec. 361)
- C. Death (500 weeks) (sec. 321)
- D. \$6,000 funeral (sec. 345)

## VI. COORDINATION OF BENEFITS

- A. 50% of old-age social security benefits (sec. 354)
- B. Proportional amount, based on ratio of employer's contributions, of after-tax amount of payments received by employee pursuant to self-insurance plan, wage continuation plan, disability insurance policy, pension or retirement plan, or 401(k) plan (sec. 354)
- C. 100% of unemployment benefits (sec. 358)
- D. SSDI not subject to coordination

## VII. MEDICAL ISSUES

- A. Reasonable and necessary? Dispute treatments not significantly accepted by medical field, or which have shown no progress over time for employee, and don't let employee sneak in bills (secs. 315, 319)
- B. Workers' compensation has priority over no-fault
- C. Get updated IME before any major medical procedure

## VIII. SECOND INJURY FUND

- A. 2 years continuous disability, benefit rate less than 50% of state average weekly wage in year of injury: Claimant may petition for rate up to 50%, with differential reimbursed by Second Injury Fund (sec. 356)
- B. Dual Employment: If insured paid 80% or less of total wages earned, differential earned on other job reimbursed by Second Injury Fund (sec. 372)
- C. Sequential specific loss resulting in T&P: Second Injury Fund pays remainder of 800 weeks (sec. 521)
- D. Maximum T&P: Second Injury Fund reimburses new maximum differential (sec. 521)
- E. Silicosis, dust disease, logging industry, exposure to polybrominated biphenyl: Second Injury Fund reimburses wage benefits greater than \$25,000/104 weeks (sec. 531)
- F. Employer wins on appeal: Second Injury Fund reimburses weekly benefits paid (general fund reimburses medical paid) (sec. 862)
- G. For employee with vocationally disabled certificate for back, heart, epilepsy, or diabetes: Second Injury Fund pays for wage and medical benefits beginning 52 weeks after injury, and all vocational rehabilitation benefits (secs. 901, et. seq.)

## IX. PROCEDURE

- A. Two-Year Back Rule: Claim must be made within 2 years of injury, but MANY exceptions. Employee limited to benefits owed 2 years prior to date of filing of Application for Hearing (sec. 381)
- B. One-Year Back Rule: If payment of wage benefits (not medical) previously made, employee limited to benefits owed 1 year prior to date of filing Application for Hearing. Also, employer's Petition to Recoup limited to 1 year prior to date of filing petition (sec. 833). Further, employee limited to nursing or attendant care benefits owed 1 year prior to date of filing Application for Hearing (sec. 381)
- C. Employer can choose doctor first 10 days
- D. File new Notice of Dispute if earlier ones do not address new claim or bill
- E. As long as no Magistrate's Order you can dispute with any reasonable basis
- F. 30 days to accept, or file new Notice of Dispute, regarding claim or bill after submitted to you (Rule 408.33)
- G. 30 days after mailing date of Magistrate's decision to appeal (sec. 859a)
- H. After 30 day appeal period expires, you have 30 more days to pay award (Rule 408.33)
- I. While claim on appeal, you only pay ongoing medical and wage (70%) benefits (sec. 862)
- J. After Order issued, you have to pay arguably-related new medical bills, and file Notice of Dispute after payment (sec. 862)
- K. After appeal ends, all accrued due and owing 30 days after date of appellate order (Rule 408.33)

## X. CASE WORK-UP—FOLLOW MY ASSERTIVE 5-STEP PLAN

- A. Medical—Use my network of credible conservative IME physicians
- B. Vocational Rehab—I pursue all options with employer, vocational placement, and *Sington*
- C. Surveillance—I strategically recommend when appropriate
- D. Fact Investigation—I communicate with employer and witnesses on every case, and will be able to exploit all weak links in employee's claim
- E. Subrogation/third party liability? (sec. 827)

## XI. KNOW PLAINTIFF ATTORNEYS, PLAINTIFFS' EXPERTS, THE MAGISTRATES, AND APPELLATE COMMISSIONERS

## XII. CHANGE OF CONDITION—VERY LITTLE IS "FINAL" IF CLAIMANT INITIALLY PREVAILS