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DELAWARE
Overview of
Workers' Compensation Law

AN OVERVIEW OF DELAWARE WORKERS' COMPENSATION LAW

I. The Delaware Workers' Compensation Statutory Framework

A. Delaware Workers' Compensation is governed by Workers' Compensation Act, **19 Del. C. § et. Seq.**

The statute has two purposes; to provide scheme for assured compensation for work related injuries without regard to fault and to relieve the employees and employers of the burden of civil litigation.

B. Exclusivity

Compensable injuries are the exclusive remedy available to the employee, **19 Del. C. § 2304.**

An employer may still be subject to liability based upon a breach of contract or other contractual provision such as an indemnification and hold harmless clause with a third party.

C. Industrial Accident Board

1. Workers' Compensation claims are heard before the Industrial Accident Board (hereinafter "Board"). The administrative duties are handled by the Department of Labor.

2. Two board members will hear each case and act as finders of fact. They are assisted by a Hearing Officer, a lawyer employed by the Department of Labor, who will advise them on legal matters that arise during the hearing, such as evidentiary questions and objections. The Hearing Officers draft the Board's opinions.

   a. A Hearing Officer may hear a case as a finder of fact if both parties stipulate to it. **19 Del. C. § 2301 B (a)(4).**

   b. Hearing Officers also rule upon Motion for Continuance of hearings.

3. Hearings are held in two locations, one in New Castle County (Wilmington) and one in Kent County (Dover).

4. Hearings are held in a location serving the county in which the accident had occurred. If the accident occurred out of state, the hearing will be held

in the county in which the claimant resides. Kent and Sussex County accidents are held in Dover.

II. Scope of Compensability

A. Employee/Employer Relationship

1. Employee is defined generally as any person in the service of a corporation, association, firm or person, except where specifically excluded, under a contract of hire performing services for valuable consideration. **19 Del. C. § 2301 (10)**. An employer is generally any entity who employs one or more employees unless specifically excluded by a provision in the statute.

2. Examples of employees not covered by the statute would be domestic servants or farm laborers.

B. Independent Contractors

1. The statute provides that contractors and subcontractors have a specific relationship as follows: Any Contractor or general contractor is required to obtain verification of Workers' Compensation insurance for all independent contractors that they retain or obtain a waiver of coverage for an exemption as to executive officers or limited liability company members. If a contractor fails to obtain proof of insurance or exemption, the contractor will be liable to pay workers' compensation for injured subcontractors and their employees.

2. In all other cases the Delaware statute follows the Restatement 2nd of Agency § 220 for a determination of whether an individual is an employee or independent contractor. There is a ten-part test which considers factors such as the method of payment, the length of term of service, the control over the work, whether the work is skilled or unskilled, and whether the individual is supplied with tools or has his own tools to perform the job.

3. Types of covered injuries and the standard of proof.

a. An employee is entitled to benefits for personal injury or death by accident arising out of and in the course of employment.
The injury must both arise out of the employment and have occurred during the scope of employment. Practically, most injuries that occur on the employers' premises will almost always be compensable. An exception to this would be an idiopathic fall.

b. Single accident.

1. An employee has the burden of proof that he sustained an injury during the course and scope of employment and that injury occurred at a fixed time and place. The standard of proof applied is "but for" the accident the injury would not occurred. *Reese v. Home Budget Center*. Del. Supr., 619 A. 2d 907 (1992).

2. Generally, injuries that occur while the employee is traveling to and from work are not compensable with certain exceptions. Traveling for employment will generally be covered, as well as if the employee is "on call". If an injury occurs on the employers premises even though the employee has not yet officially clocked in it may still be compensable. *Tickles v. PNC Bank,* Del Supr., No. 133, 1997.

c. Cumulative detrimental effect.

1. In order to prove that the employment had a cumulative detrimental effect on a physical condition the employee must show that the ordinary stress and strain of employment was "a substantial cause" of the injury. *Duvall v. Charles Connell Roofing,* Del. Supr. No. 564 A. 2d 1132 (1989).

2. Generally this type of claim is the typical repetitive use claim such as carpel tunnel syndrome, certain tendinitis claims and low back problems from years of lifting.

d. Compensable occupational disease.

1. A compensable occupational disease arises out of the employment and the exposure occurs in connection with the employment. 19 *Del. C.* § 2301 (4). Normally results from peculiar nature of employment.

2. Delaware uses the last injurious exposure rule to determine the employer/carrier on the risk for prolonged exposure. The rule provides that the most recent employer where the worker was exposed is liable for the entire claim. In Delaware the last rule applies to the last in-state employer which is subject to the jurisdiction of the Workers' Compensation Act.

3. Burden of proof

The claimant has the burden to prove exposure to a disease causing agent in the work place.

4. Standard of review

Proximate causation is determined in a case of compensable occupational disease by the "but for" standard. *Reese.*

e. Psychological injuries

The State of Delaware recognizes a compensable mental injury absent any physical trauma. *State v. Cephas,* 637 A. 2d. 20 (del. 1994). The claimant must prove that the mental illness was the result of stressful working conditions by an objective causal nexus test. The claimant must prove both the existence of the stressful working conditions and relate those conditions to the mental disorder. The standard whether the working conditions were a substantial cause of the claimant's condition.

f. Work accident can aggravate, accelerate, cause or contribute to pre-existing injuries.

C. Defenses and Injuries That Are Excluded from Compensation.

1. The three-day rule.

a. The "three-day rule" requires that an employee be incapacitated from earning full wages for a period of three days before any benefits are available. 19 *Del. C.* § 2321.

b. Exceptions to this rule are for permanent impairment to hearing or vision, amputations and hospitalization.

c. Three days need not be missed at the time of the accident but can occur at any time during the limitations period.

d. If 7 days are missed, then all compensation is paid from day one.

2. Intoxication

a. If an employee is injured as a result of his intoxication he will forfeit compensation. The employer has a burden to prove this forfeiture of benefits by establishing that the employee was intoxicated *and* that the intoxication was the proximate cause of the injuries. *Finocchiaro v. Dominos Pizza*, C.A. No. 06A-05-003 (Del. Supr. 2006). Not enough to show intoxication aggravated injury.

b. The employee may also forfeit compensation for a willful and wanton act. 19 *Del C.* § 2353 (b). An employee whose behavior demonstrates a deliberate and reckless indifference to danger may forfeit benefits i.e., assault if personally motivated and no connection to work. This includes an employee's intention to injure another employee or if there was a willful failure to use safety devices provided by the employer.

c. If the employee refuses an offer of reasonable employment by the employer within the physical restrictions established by a physician, then compensation may be forfeited. 2353 (c).

d. Suspension of benefits

1. During a period of incarceration wage replacement benefits including total or partial disability may be suspended upon adjudication of guilt. Mere incarceration pending a trial is not sufficient.

2. Refusal of the employee to attend a defense medical examination or accept reasonable medical care may result in suspension of benefits.

e. Horseplay

Participation by the employee voluntarily in the horseplay generally disqualifies him from benefits. Seinsoth v. Rumsey Electric Supply, 2001 WL 845661 (Del. Super.). However, an employee not participating in horse play may recover for injuries sustained as a result of horse play initiated by other employees.

D. Assault or Assaults

Employee subject to an assault that is neutral or not directed against the employee for personal reason are compensable. *Rose v. Cadillac Fairview Shopping Center,* Del. Supr. 668a 2d 782 (1995). A claimant must be able to show that an assault was

within the scope of employment or somehow connected to the employment and that it was not personal in nature. A personally motivated assault is not compensable. *Brogan v. Value City Furniture*, Del Supr. C.A. No. 01A-06-002 (2702).

III. Benefits Available.

A. Temporary Total Disability (TTD)

1. The employee is unable to work at all due to the injuries sustained in the industrial accident. 19 Del. C. § 2324. Benefits are calculated by determining the claimant's average weekly wage (AWW) and multiplying that by 2/3 to obtain his compensable rate. This rate is set at the time of the accident.

2. The AWW is subject to a maximum and minimum rate set by the Department of Labor on an annual basis. If the employee's average weekly wage is less than the minimum compensation, then the rate for total disability will the same as average weekly wage.

3. The average weekly wage is calculated by averaging the previous 26 weeks of weekly gross wages received by the employee. This includes any overtime hours or bonuses. 19 *Del. C.* § 2302.

4. Temporary total disability benefits continue until such time as the Board signs an Order terminating the benefits or the claimant voluntarily signs a Final Receipt indicating that the benefits have ended or that they have returned to work. A carrier or employer may not unilaterally stop paying benefits once an agreement has been reached or benefits started. The employer may file a Petition for Review of the Agreement in order to terminate the benefits if it has a medical opinion or functional capacity evaluation indicating that the claimant may return to work with or without physical restrictions. 19 *Del. C.* § 2347.

B. Temporary Partial Disability (TPD)

1. The claimant may return to work but with restrictions that may result in a loss of earning capacity. 19 *Del. C.* § 2325.

2. TPD is capped at 300 weeks.

3. Carrier may use a vocational expert to conduct a labor market survey (LMS) to determine job availability within the claimant's restrictions. This also is used to estimate the wage loss in order to calculate the temporary partial disability.

4. TPD is calculated by taking the AWW at the time of the accident and subtracting the post-injury earning capacity identified by the LMS or actual earning, then reduced by 2/3. The TPD rate cannot be above the State maximum compensate rate, but can be below the minimum (for example, $5.00 weekly).

IV. Permanent Partial Disability (PPD) 19 *Del. C.* § 2326

A. 19 *Del. C.* § 2326

1. Section 2326 of the statute contains a schedule of weeks for a 100% loss to certain body parts. Permanency is assigned to the regional body part, not whole person. Unscheduled losses are subject to a maximum number of 300 weeks.

2. The presumption for permanent partial impairment is that there is adverse effect on the earning capacity based on a reduction of function of the injured body part.

3. The applicable compensation rate is fixed when the claimant is at maximum medical improvement. This is usually one year post accident or surgery. As such, the maximum or minimum rate may be higher than the rate they received for total disability benefits.

4. Permanency is calculated by taking the scheduled loss amount and multiplying that by the percentage assigned by the medical expert, usually in accordance with the Fifth or Sixth Edition of the AMA Guides to the Evaluation of Permanent Impairment. The number of weeks assigned is then paid via lump sum.

V. Disfigurement Benefits

A. *A. The scale for disfigurement benefits is either 1-150 weeks or permanency plus 20%. The latter scale is called a Bagley's Analysis and only comes into play if the permanency award is over 125 weeks.*

B. The standard of review is "visible and offensive when the body is clothed normally, including for recreational activities" (the bathing suit test). Dean v. Chrysler Corp., Del. Supr., 332A. D. 143 (1975).

VI. Medical Expenses

A. Medical expenses are compensable to the extent that they are reasonable necessary and causally related to the industrial accident. **19 Del. C. § 2322.**

B. The 2007 Reform Legislation took effect May 23, 2008 establishing provider certification, practice guidelines, utilization review, forms and a fee schedule.

C. Practice Guidelines

1. Treatment under practice guidelines creates presumption that treatment is reasonable and necessary. The goal was to mainstream care and eliminate abuse.
   Seven Current Guidelines:
   - Carpal Tunnel
   - Chronic Pain
   - Cumulative Trauma Disorder
   - Low Back
   - Shoulders
   - Cervical Spine – effective 6/1/09
   - Lower Extremities – effective 6/13/11

   Treatment not subject to these Guidelines is not available for Utilization Review.

D. Provider Certification

1. Certification by doctors who agree to accepted the Delaware Fee Schedule and not balance bill the claimant. This is required to ensure payment without preauthorization. Doctors who are not certified are only paid one office visit without preauthorization.

2. Providers billing for services rendered under the Workers' Compensation Act can become certified by the Department of Labor. A certified medical provider providing treatment in a compensable case has a presumption that the bills are reasonable and necessary. The provider is subject to the practice guidelines. 19 *Del. C.* § 2322 F.

3. In a denied or contested case, a carrier may opt to pay benefits without prejudice subject to clear guidelines in 19 Del. C. § 2322(h). Such requires written notice to claimant and provider of what is being paid without prejudice and standard boilerplate language in 14-point font.

4. Bills submitted by certified health care providers subject to the health care practice guidelines (HCPG) must be paid or denied within thirty (30) days of receipt of the invoice and documentation sustaining the charges. Failure to pay within this timeframe subjects the invoice to interest at a rate of 1% per month payable to the provider. Failure to pay could also subject the carrier to a fine of up to $5,000.00 per occurrence.

5. An employer or carrier who wishes to contest an invoice subject to the HCPG can file for a utilization review (UR). The carrier has 15 days from the date of denial of the bill to submit the invoice to the Department of Labor for Utilization Review. The UR will either certify the treatment as within the practice guidelines or indicate that the treatment is not certified. Either side has the ability to then appeal within 45 days of the date of the receipt of the UR decision. The appeal results in a *de novo* hearing before the IAB. UR Guidelines are set forth on www.delawarehealthworks.com.

6. Utilization Review can be for prospective treatment (i.e. a proposed surgery or physical therapy from a set date moving forward).

7. Vocational rehabilitation is not considered medical expenses and is not recoverable by a claimant. However, the Board itself may order Vocational Rehabilitation and refusal to attend by the claimant may result in forfeiture of benefits.

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VII. Attorney Fees.

A. The claimant is entitled to attorney's fees when successful in prosecuting a Petition or a settlement is reached within 30 days of a hearing date. The attorney fee award is either 30% of the total award to the claimant or 10 times the average weekly wage as set by the Secretary of Labor at the time of the award, whichever is less. 19 Del. C. § 2320.

B. In a petition to determine causation an award for attorney fees can still be made even if there is no monetary award to the claimant.

VIII. Medical Witness Fees

A. If benefits are awarded by the Board, the carrier shall be responsible for reimbursing the claimant's medical expert's fees and associated court reporter's costs.

B. There is a limitation on claimant costs of $2,000.00 for deposition testimony and $3500.00 for a live appearance

IX. "Huffman" Damages.

A. If the claimant demands payment for an award or agreed upon benefit and the carrier is in default by more than 30 days after the Huffman Demand for payment has been made, the claimant may file liquidated damages, which include 10% per day of the total amount due. 19 Del. C. § 2357, 19 Del. C. § 1101.

Huffman v. C.C. Oliphant and Sons, Inc., Del. Supr., 432 A. 1207 (1981) stands for the proposition that the failure to pay benefits owing for workers' compensation may result in penalties under the wage payment and collection act.

B. A "Huffman" demand is applicable in the following instances:

1. A unilateral cessation of benefits.

2. Failure to pay a Board Award timely.

3. Failure to pay benefits per a settlement agreement in 14 days.

4. Failing to pay medical expenses that were the subject of a Board Order.

C. The standard in a "Huffman" case is whether the funds were withheld without a good faith basis. All the claimant must show is that a demand was made for the funds and they were not paid within thirty days of that demand.

X. Petitions

A. Petition to Determine Compensation Due. (DCD)

1. A DCD petition is the claimant's initial petition for benefits upon failure to reach agreement as to compensation. The Burden of Proof is on the employee to prove compensability by a preponderance of evidence.

B. Petition to Determine Additional Compensation Due.

1. This petition is used for all other claims for benefits on a compensable case except for disfigurement benefits or an Appeal of UR.

2. Recurrence of Disability

a. When there is a claim for recurrence of disability or the need for medical expenses the claimant can file this petition. If the claimant has returned to work and there is a new carrier on the risk, then there may be an issue over which carrier is liable for benefits. The burden is on the first carrier to show that there was a new event in order to shift liability to the subsequent carrier. *Standard Distributing Company v. Nally,* Del. Supr., 630 A. 2d. 640 1993.

b. When a claimant's disability benefits have been terminated and the claimant wishes to claim a recurrence of disability, then the burden is on the claimant to prove by a preponderance of evidence that he is now entitled to additional disability b

3. Medical Benefits

a. The claimant may file for disputed treatment such as denied past bills or a proposed surgery.

4. Permanent Impairment

a. When a claimant wishes to file a claim for permanent impairment he uses the Determine Additional Compensation Due petition.

b. Permanent impairment petition is to be accompanied by a report from the claimant's doctor indicating the percentage of impairment.

c. Permanent impairment benefits may not be apportioned between a preexisting asymptomatic condition and the current injury which may have triggered this preexisting condition. *Sewell v. Delaware River and Bay Authority*, Del.Supr., 796 A. 2d., 655 (2000).

C. Disfigurement Benefits
A special Petition has been created for the filing of benefits to determine the amount of compensation for disfigurement.

D. Petition to Appeal Utilization Review
Parties file a Petition to Appeal a Utilization Review Determination within 45 days of the receipt of the UR determination.

E. Petition to Determine Compensation Due to Dependents of Deceased Employee.

F. Death Benefits

1. A claimant's beneficiaries are entitled to compensation for the death of the employee. The children will obtain compensation of 66 & 2/3 of the wages of the deceased employee with 10% additional for each child in the excess of two. If there is a surviving spouse, the spouse gets 66 & 2/3 of the wages with increases depending on the number of dependent children. 19 *Del.C.* § 2330.

2. Compensation for children is payable until the child reaches 18 years or if over 18 years, if a full-time student until 25. The surviving spouse is entitled to 400 weeks of compensation and benefits will continue after this period until the surviving spouse dies. Remarriage will reduce the compensation rate after ten years

G. Petition for Commutation

1. The claimant may reach a global settlement, called a full and final commutation, with the carrier for a lump sum payment of any and all benefits.

2. Any commutation of benefits other than a lump sum payment of permanent impairment benefits must be approved by the Board.

3. If the claimant is not represented, the Board will conduct a Settlement Conference to approve the commutation.

H. Petition to Review Compensation Agreement (Termination Petition)

1. Once the claimant is receiving disability benefits – i.e., on an open agreement for benefits – such must continue until terminated by agreement between the parties or by order of the Board. If the claimant is released to return to work and does not agree to end such benefits, the carrier can then file a Petition to Review Compensation with the Board to obtain an Order terminating benefits.

   If the carrier may not unilaterally terminate benefits, even if the claimant is released to work.

2. If a claimant returns to work, the carrier may cease payment of wage loss benefits but must still obtain a Final Receipt. If the claimant returned to work, has a recurrence of total disability, and the carrier resumes payments, such benefits must continue until the claimant agrees to terminate or by order of the Board.

3. The employer must prove that the employee has been medically cleared to return to work, and if partially disabled, job availability in the open labor market.

4. If the employee has been released by his own doctor, then the employee has a duty to take a reasonable job search and failure of the claimant to show he has taken a reasonable job search may result in the termination of benefits.

5. The employer can make the employee a job offer within the doctor's restrictions, which, if not accepted, may result in the termination of benefits to the claimant.

6. If the employer does not have work available within the claimant's restrictions, the employer may send a Hoey Notice to the claimant advising that modified duty is not available and they should seek employment elsewhere. The employer may then file a Termination Petition.

XI. Statute of Limitations

A. Single event injuries.

1. The claimant has two years from the date of injury to either enter into an agreement or file a petition with the Board. 19 Del. C. § 2361.

2. Upon receiving notice of a claim and providing its denial of same, a carrier must provide notice of this two-year statute of limitations directly to the claimant. Failure to provide this notice results in a tolling of the statute of limitations.

B. Compensable occupational disease
The claimant has one year from knowledge that the disease was triggered by their employment to file for compensation and must provide the employer with notice of such condition within six months of knowledge.

C. Rolling statute of limitations for compensable claims.
Once a claim has been accepted, there is a five-year rolling statute of limitations beginning from the date of the last payment made. Payments that trigger the continuation of the five-year statute of limitations are limited to medical and indemnity benefits. Costs or fees do not extend the five-year period.

XII. Wage Calculation

A. Average Weekly Wage (AWW)

1. The average weekly wage is determined by averaging 26 weeks of gross wages prior to the accident. If the employee worked less than 26 weeks but at least 13 weeks, the average weekly wage is total number of weeks worked.

2. If the employee sustained an injury before completing 13 weeks of work, the calculation is based on either by the contracted rate (i.e. $10 per hour for 40 hour work week) or via a similar situated employee.

B. Part Time Employment
Part-time employees' average weekly wage is calculated the same as full-time employees

C. Concurrent versus Joint Employment – combining wages from two or more employers.

Where a claimant is working two jobs, the wages used to calculate the average weekly wage are only the wages from the job where the injury occurred. Peterman v. Claulk, Del.Supr., 612 A.2d 159 (1992). This is referred to as concurrent employment. However, wages can be combined if there is a joint employment relationship, which means the claimant is under simultaneous control of two employers and the services are the same or closely related. *A.Mazzetti & Sons, Inc. V. Ruffin*, Del. Super. 427 A.2d 1120 (1981).

D. Rate Chart
State Maximum AWW and RATE CHART

Max = 66-2/3% of the State AWW
Min = 22-2/3% of the State AWW

	State AWW	Max. Rate	Min. Rate
7/01/2024	$1,328.01	$885.34	$295.12
7/01/2023	$1,301.27	$867.52	$289.18
7/01/2022	$1,234.04	$822.70	$274.24
7/01/2021	$1,196.64	$797.97	$265.99
7/01/2020	$1,121.49	$747.66	$249.22
7/01/2019	$1,088.84	$725.89	$241.96
7/01/2018	$1,070.48	$713.65	$237.88
7/01/2017	$1,030.49	$686.99	$229.00
7/01/2016	$1,034.18	$689.45	$229.82
7/01/2015	$1,019.44	$679.63	$226.54
7/01/2014	$998.35	$665.57	$221.86
7/01/2013	$991.19	$660.79	$220.26

XIII. Appeals

A. Generally

1. An appeal from the Board is taken to the Superior Court and it is "on the record," meaning that the Court will only consider the evidence presented to the Board. 19 Del. C. § 2349, 2350.

2 The appellant must file a notice of appeal setting forth the grounds for the appeal and the specific issues to be appealed to the Superior Court. Supr. Ct. Civ. R. 72. The appeal is filed in the county where the injury occurred.

B. Appeal Period

1. A party has thirty days from the date of the Board's ORder to file a Notice of Appeal. If after 30 days, neither party has filed an appeal the Board's award becomes the final.

2. Cross appeals in the Superior Court are permitted within 10 days after the first notice of appeal was filed.

C. Scope of Review

1. The appellant review of the Boards decision is limited to:

a. Did the board err as matter of law or fact; or;

b. Is there substantial evidence to support the Boards determination, or stated another way, did the Board ignore substantial evidence in reaching its conclusions. *General Motors Corp. v. Freemen*, Del. Supr., 164 A. 2d 686 (1960).

2. The substantial evidence standard has been defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion". *State of Delaware v. Cephas*, Del. Supr., 637 A. 2d 2023 (1994). Accepting one doctor opinion over another is substantial evidence.

D. Supreme Court Review

A decision of the Superior Court may be appealed to the Supreme Court. Again, this is a review on the record and the Supreme Court will review the Superior Court decision and the Board decision to determine

whether there were errors of law or fact or whether the Court ignored substantial evidence. *Lester C. Newton Trucking Co., v. Neil,* Del. Supr., 204 A. 2nd, 393 1964.

E. Attorneys' Fees

Attorneys' fees are recoverable at the discretion of the appellate court in situation were the "claimant's position in the hearing before the Board is affirmed on appeal". 19 *Del. C.* § 2350 (f).

XIV. Third Party Recovery and Liens

A. Statutory Provisions.

1. 19 *Del. C.* § 2363 controls the recovery of workers' compensation liens from third parties responsible for the employee's injury.

    a. Section 2363 provides that the claimant's acceptance of workers' compensations benefits is not an election of remedies and the claimant still has a viable cause of action against a third party tortfeasor.

    b. Any recovery by the employee is subject to a lien by the carrier. The lien is a priority lien except to the extent that the lien consists of expenses that are PIP eligible. In that case, the carrier does not have lien against the claimant's third-party settlement, but has an independent right of subrogation in the same manner as a PIP or no fault carrier. 21 Del. C. § 2118.

    c. If the claimant or his representative does not bring suit within 260 days of the accident, the carrier may elect to do so in the name of the claimant. In order to do so the carrier must give the claimant 30 days' notice of its intent by registered mail.

    d. Settlement by one party does not include additional recovery by the other.

2. Recoverable Liens

    a. The carrier will be responsible for its proportionate share including expenses for attorneys' fee. *Keeler v. Hartford Mutual Insurance Co.*, Del. Supr., 207, Walsh, J. (Feb. 29, 1996).

b. The order of distribution is as follows:

1. Expenses and recovery, including attorneys' fees,

2. Carrier to the extent money has already been paid, and;

3. Employee with a credit to the carrier in the amount received by the employee.

4. The Workers' Compensation carrier will have a priority lien over third party recoveries. The third party responsible for the compensable injury cannot be a co-employee, if both this party and the claimant were in the course and scope of their employment when the accident occurred.

5. The carrier can go to the Board for an order seeking to perfect its credit on future benefits.

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