



March 31, 2006

WRITER'S DIRECT NUMBER: (317) 236-2495  
DIRECT FAX: (317) 592-4758  
INTERNET: [shortrid@icemiller.com](mailto:shortrid@icemiller.com)

WRITER'S DIRECT NUMBER: (317) 236-2180  
DIRECT FAX: (317) 592-4601  
INTERNET: [fierek@icemiller.com](mailto:fierek@icemiller.com)

Dear Clients and Friends

RE: 2006 Amendments to the Indiana Worker's Compensation Act

On March 22, 2006, Governor Daniels signed into law House Enrolled Act 1307, which makes several important changes to the Indiana Worker's Compensation Act<sup>1</sup>. This law is generally beneficial to employers because it corrects a court decision that made it more difficult for employers to win at hearing and because it clarifies the statute of limitations. However, it also increases disability and impairment benefits gradually over the course of the next few years.

### **Burden of Proof**

In 2003, the Indiana Supreme Court decided a case entitled *Milledge v. The Oaks, A Living Center*, 784 N.E.2d 926 (Indiana 2003). Prior to *Milledge*, the general rule in Indiana was that the employee had the burden of proving each and every element of his or her claim. The employee had to prove an accidental injury, arising out of AND in the course of employment. The *Milledge* decision shifted the burden of proof from the employee to the employer in some cases. With the new amendments, the Indiana General Assembly has changed the rule back.

Ms. Milledge twisted her ankle while stepping out of her car onto the employee parking lot on her way into work. The surface of the lot was without defect. The Indiana Supreme Court found that Ms. Milledge's claim was compensable because there was no known reason (such as an underlying knee problem) as to why she twisted her ankle and because the employer did not prove that the risk of the sprain was personal to Ms. Milledge. This decision relied on the claimant-friendly "positional risk doctrine," which Courts have been viewing with increasing favor over the last several years.

Under this doctrine, an accident may be caused by a "personal risk," such as an underlying physical problem, and thus not be compensable. It may be caused by an employment risk, such as a machine malfunction, and thus be compensable. Finally, the injury may be caused by a "neutral risk," a cause neither clearly related to work nor to personal issues. Under the positional

---

<sup>1</sup> The amendments outlined were also made to the Indiana Occupational Disease Act.

risk doctrine, if an injury due to a "neutral risk" occurs in the course of employment, the burden shifts to the employer to prove that the accident did not arise out of employment. Thus the *Milledge* decision abrogated a long-standing rule and required the employer, under some circumstances, to prove that the accident was caused by a risk personal to the employee or pay compensation—even when the employee said she did not know what caused the accident!

HEA 1307 legislatively overrules the *Milledge* decision and makes clear that the burden of proving all elements of a claim is upon the employee. Thus, an employee must actually prove that his or her injury was the result of some work-related risk for a claim to be compensable. This is an excellent result for Indiana employers.

### **Statute of Limitations**

The statute of limitations for filing an Application for Change in Condition with the Board was simplified. The limitations period is now two years from the last day for which compensation (disability or impairment benefits) was paid, regardless of what the claimant is seeking. This changes older statutory and case law which allowed the claimant one year to seek a modification for a permanent partial impairment ("PPI") award or ask for medical treatment and two years to seek modification of an award of temporary total disability ("TTD"). Obviously the new two year period gives the employee more time to file an Application for Adjustment of claim with the Worker's Compensation Board of Indiana, but because it will be easier to administer than the old rule, we think it will benefit employers and claims administrators as well.

### **Second Injury Fund**

The calculation of the Second Injury Fund assessment was modified. Self-insured employers and carriers will be receiving further information from the Board regarding this, and if you have any questions about it, please feel free to call us.

### **Compensation Increases**

The new amendments increase the maximum average weekly wage ("AWW") over the next few years, beginning July 1, 2006. This in turn increases the maximum TTD benefit rates and maximum compensation rates. It will not increase the TTD rate of all injured employees but only those earning above the old maximum AWW of \$882. The following schedule applies:

- **TTD**

<u>Date of Injury</u>	<u>Maximum AWW</u>	<u>Maximum TTD</u>	<u>Maximum Compensation</u>
7/1/02-6/30/06	\$882	\$588	\$294,000
7/1/06-6/30/07	\$900	\$600	\$300,000
7/1/07-6/30/08	\$930	\$620	\$310,000

7/1/08-6/30/09	\$954	\$636	\$318,000
7/1/10-	\$975	\$650	\$325,000

- **PPI**

The value of degrees for PPI ratings was also increased, but this change does not begin to take effect until next year, July 1, 2007. The following schedule applies:

<u>Date of Injury</u>	<u>Degrees</u>	<u>Dollar per Degree</u>
7/1/01-6/30/07	1-10	\$1,300
	11-35	\$1,500
	36-50	\$2,400
	51-100	\$3,000
7/1/07-6/30/08	1-10	\$1,340
	11-35	\$1,545
	36-50	\$2,475
	51-100	\$3,150
7/1/08-6/30/09	1-10	\$1,365
	11-35	\$1,570
	36-50	\$2,525
	51-100	\$3,200
7/1/09-6/30/10	1-10	\$1,380
	11-35	\$1,585
	36-50	\$2,600
	51-100	\$3,300
7/1/10-	1-10	\$1,400
	11-35	\$1,600
	36-50	\$2,700
	51-100	\$3,500

We think that, on the whole, this new law will make it a little easier to predict the outcome of Worker's Compensation cases and is generally favorable to employers, despite the higher compensation benefits. The fact that the law incorporates changes for the next four years is also positive, because that makes it less likely that employee and union lobbyists will seek more changes next year. On the whole, the Indiana law is a good one, and we think that these changes will help to keep it that way.

March 31, 2006  
Page 4

If you have questions or need more information, please feel free to contact us.

Very truly yours,

ICE MILLER LLP



Kathleen K. Shortridge



Natalie Fierek