

WORKERS' COMPENSATION 101

Presented to:

Labor – Management Advisory Council

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WORKERS' COMPENSATION INSURANCE

Paid for by employers

Provides: Cash benefits

Medical care

Rehabilitation Services

To workers who experience work related
injuries or occupational diseases

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HISTORY

- Designed to overcome deficiencies of the negligence approach – tort or civil remedy
 - Only remedy employee had against employer
 - Few employees were successful in these suits
 - The litigation was costly and time consuming
 - If employee won, recovery could be substantial

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WORKERS' COMPENSATION PRINCIPLE – TWO ELEMENTS

- 1) No Fault System
 - Employee doesn't have to prove employer negligence
 - Employee only has to prove the injury/OD is work-related
- 2) Exclusive Remedy
 - Statutory benefits are the employer's only liability
 - Employee cannot bring tort suits against their employer

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WORKERS' COMPENSATION ACROSS THE UNITED STATES

- No federal regulation of workers' compensation
- All 50 states have workers' compensation acts –
 - All mandatory, except for Texas (elective).

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Montana's Workers' Compensation Act - History

- 1909 Compensation system for coal miners – 2nd in U.S. – declared unconstitutional
- 1st Comprehensive Act created by Montana Legislature in 1915 – hazardous employment
- **Optional** coverage of nonhazardous employment
- Agricultural work excluded
- In 1973, provided broad mandatory coverage for nearly all employers and employees

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DATE OF INJURY/OD CONTROLS COVERAGE AND BENEFITS

- Date determines whether there is coverage
- Date determines which law and benefits should be applied

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MONTANA'S WORKERS' COMPENSATION ACT

GOALS:

Provide medical care & income to injured workers

Protect employers from costly and unpredictable law suits from employees

ROLE:

With few exceptions, workers' compensation is the only remedy available to injured workers

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DECLARATION OF PUBLIC POLICY – INTENT – 39-71-105, MCA - OBJECTIVES

- Wage loss should bear reasonable relationship to actual wages lost
- Return worker to work as soon as possible
- Speedily obtain benefits
- Provide coverage at reasonably constant rates
- Minimize reliance upon lawyers and the Courts
- Construed according to its terms and not liberally in favor of any party

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DECLARATION OF PUBLIC POLICY – INTENT – 39-71-105, MCA

- Stress claims are not covered – mental-mental or mental-physical
- Workers are not required to give employer 30 day notice for occupational disease claims
- Conclusive Presumption holder of independent contractor exemption certificate issued by department is an IC and holder waives rights and benefits under law

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Workers' Compensation Insurance

3 SOURCES OF COVERAGE

- **Plan 1 - Self Insurance**
- **Plan 2 - Private Carrier**
- **Plan 3 - Montana State Fund**

Costs vary but Benefits are identical

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MANDATORY COVERAGE OF EMPLOYEES

- Any person in this state in service of an employer
- Includes: undocumented workers, minors, part-time, full-time, elected and appointed paid public officers, and others specified by law – 39-71-118, MCA

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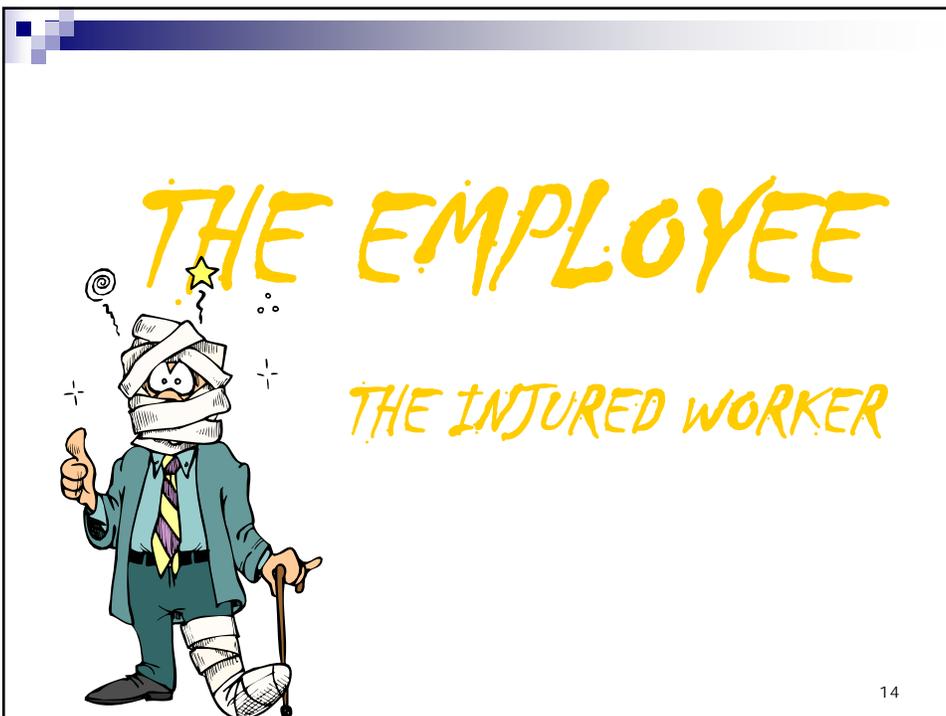
WORKERS EXEMPT FROM MANDATORY COVERAGE – 39-71-401, MCA

- 26 EXEMPTIONS

- SOME EXAMPLES:

- Independent Contractors (ICs)
- Household or domestic
- Dependent members of an employer's family
- Real estate, securities, or insurance salespersons
- Newspaper carriers or freelance correspondents
- Barbers and cosmetologists
- Jockeys and other horseracing workers
- Respite care and companionship services
- Athletes engaged in contact sport

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INJURY

- Internal or external physical harm
- Death
- Caused by an accident
- Established by objective medical findings



Definition of an Injury – 39-71-119, MCA₁₅



ACCIDENT

- Unexpected traumatic incident or unusual strain
- Identifiable by time and place of occurrence
- Identifiable by member or part of body affected
- Caused by a specific event on a single day or during a single work shift

Definition of an Accident – 39-71-119, MCA₁₆

COURSE & SCOPE OF EMPLOYMENT

Must arise out of employment

Occurs on the employer's premises and during working hours

HB334 specifically excluded from course and scope:

- Injuries on a paid or unpaid break
 - Not on the employer's worksite
 - Not performing any specific tasks for the employer

Injuries during a social or recreational activity sponsored or paid by the employer, unless:

- Employee is paid while participating or
- Whose presence is required or requested by employer

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Burden to Prove Accident/Injury

- Claimant must establish it is more probable than not
 - Claimed injury occurred
 - Claimed injury aggravated a pre-existing condition

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OCCUPATIONAL DISEASE (OD)

- Harm, damage or death
- Established by objective medical findings
- Arising out of or contracted in the course and scope of employment
- Events occurring on more than a single day or work shift



Definition of an OD - 39-71-116, MCA

Burden to Prove Occupational Disease

- Claimant must establish an OD
 - By objective medical findings
 - Work events are the major contributing cause in relation to other factors contributing to the OD

NOTICE OF INJURY

An injured worker must provide notice to employer or employer's insurer within 30 days of the occurrence of the accident that caused the injury – 39-71-603, MCA



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FIRST REPORT OF INJURY (FROI)

An injured worker must file a claim for compensation (First Report of Injury - FROI) within 12 months of injury or OD – 39-71-601, MCA

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FIRST REPORT OF INJURY (FROI)

Employers shall report every accident, injury or OD to insurer within 6 days of notice - ARM 24.29.801

Insurers shall report every injury or OD to the Department of Labor & Industry within 30 days of report - 39-71-307, MCA



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CHOICE OF TREATING PHYSICIAN

- HB334:
 - Allows injured worker to choose initial treating physician
 - Allows insurer to approve choice or designate a different treating physician
 - Details treating physician requirements
 - Explains fee schedule reimbursement for medical treatment
 - Prior to designation by insurer = 100%
 - After designation by insurer = 110%
 - Referrals by designated = 90%

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MEDICAL CARE

- Provides payment of reasonable medical care related to the injury/OD
- HB334: Rebuttable presumption that adopted U & T Guidelines establish compensable medical treatment for an injured worker
- Medical treatments not recommended by the U & T Guidelines require prior authorization from the insurer
- Parties may request an Independent Medical Review by the Department Medical Director for treatments not recommended in the U & T Guidelines
- Insurer reimburses at amounts in Department fee schedules in effect on date of service - cost containment
- No co-payments except the injured worker pays \$25 co-payment for subsequent ER visits
- Travel Expenses – Insurer reimburses reasonable travel, lodging, meals, and misc. expenses
- Reimbursed at rates allowed for state employees

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Medical Care - Continued

HB334:

- Medical benefits (except PTD) terminate 60 months from the date of injury
- Medical benefits may be reopened within 5 years of termination
 - Request to Department Medical Provider/2 member panel
 - Medical condition direct result of injury/OD
 - Medical treatment needed to allow continuation of work or return to work
- If reopened:
 - Remain reopened 2 yrs or reevaluated every 2 years²⁶

WAGE LOSS COMPENSATION Indemnity Benefits Cash Payments

- Waiting period - No wage loss paid for 1st 32 hours or 4 days
- Compensation begins on 5th day
- HB334:
 - Provides for retroactive payment of 4 day waiting period if disability goes beyond 21 days

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Temporary Total Disability Benefits (TTD)

- Temporarily unable to work any job
- Total loss of wages
- 66 2/3% of time of injury (TOI) average weekly wage (AWW)
- Up to maximum State's average weekly wage (SAWW) – FY14 = \$698 per week
- Paid until injured worker reaches maximum medical improvement (MMI) and is released to return to work or returns to work

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Examples of TTD Calculations Based on TOI Wage at 40 hrs per Week – 66 2/3%

- Minimum Wage/\$7.80 per hr = \$312
 - TTD rate = \$208 per week
- \$10 per hr = \$400
 - TTD rate = \$266.67 per week
- \$27 per hr = \$1,080
 - TTD rate = \$720 BUT capped at \$698 per week

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Temporary Partial Disability Benefits (TPD)

- Temporarily able to work with limitations or modifications
- Partial loss of wages
- Difference between TOI wages and actual wages paid during TPD – not to exceed TTD rate
- Paid until MMI

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Examples of TPD Calculations Based on TOI Wage at 20 hrs per Week

- Minimum Wage/\$7.80 per hr x 40 hrs = \$312
 - Part-time wages @ 20 hrs = \$156
 - TPD = \$156
- \$10 per hr x 40 hrs = \$400
 - Part-time wages @ 20 hrs = \$200
 - TPD = \$200
- \$27 per hr x 40 hrs = \$1080
 - Part-time wages @ 20 hrs = \$540
 - TPD = \$540 – NO CAP since < \$698

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Permanent Partial Disability Benefits (PPD)

- Reached maximum medical improvement (MMI)
- HB334:
 - Has a whole person (WP) permanent impairment rating >0%, able to return to work in some capacity, and has an actual wage loss, or
 - Has a Class 2 or greater (WP) permanent impairment and no wage loss
- Requires use of the 6th Edition of the AMA Guides to Evaluation of Permanent Impairment
- Increases the number of weeks in the PPD calculation from 375 to 400 weeks

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PPD Benefits - Continued

- 66 2/3% of time of injury (TOI) average weekly wage (AWW)
- Capped at ½ SAWW or \$349 per week – FY14
- Class 2 or greater Impairment rating and no actual wage loss
 - % is multiplied by 400 wks and paid at PPD rate
- Impairment rating >0% with actual wage loss
- Add percentages for following factors:
 - Impairment Rating
 - Age
 - Education
 - Restrictions
 - Wage Loss
- Multiply total % x 400 weeks for number of weeks at PPD rate

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Examples of PPD Calculations

- **5% Class 2 impairment rating – NO wage loss**
- 5% x 400 weeks = 20 wks x 66 2/3% TOI Wage or **CAPPED AT ½ SAWW OR \$349**
- TOI Minimum Wage or \$7.80 per hr
 - 20 wks x \$208 = \$4160
- TOI Wage \$10 per hr
 - 20 wks x \$266.67 = \$5333.40
- TOI wage = \$27 per hr
 - 20 wks x \$349 = \$6980

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Examples of PPD Calculations - Continued

<ul style="list-style-type: none"> ■ Impairment Rating 5% ■ 42 yrs old 1% ■ GED 0% ■ \$1 per hr wage loss 10% ■ Restrictions med-light <u>2%</u> ■ TOTAL 18% 	<ul style="list-style-type: none"> ■ TOI wage = \$10 per hr 	<ul style="list-style-type: none"> □ $\\$266.67 \times 72 \text{ wks} = \underline{\\$19,200.24}$
<ul style="list-style-type: none"> ■ $18\% \times 400 = 72 \text{ wks}$ <ul style="list-style-type: none"> □ at PPD Rate 	<ul style="list-style-type: none"> ■ TOI wage = \$27 per hr 	<ul style="list-style-type: none"> □ \$349 PPD Rate-Max Rate □ $\\$349 \times 72 \text{ wks} = \underline{\\$25,128}$

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Permanent Total Disability Benefits (PTD)

- Reached MMI
- No reasonable prospect of physically performing regular employment
- 66 2/3% of time of injury (TOI) average weekly wage (AWW)
- Up to maximum State's average weekly wage (SAWW) – FY14 = \$698 per week
- Cost of Living Increases every yr after 1st 104 weeks paid - % increase in SAWW
- Paid until reach retirement age

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Death Benefits

- Paid to Beneficiaries
- 66 2/3% of time of injury (TOI) average weekly wage (AWW)
- Up to maximum State's average weekly wage (SAWW) – FY14 = \$698 per week
- Minimum is 50% of SAWW (\$349 – FY14) but may not exceed actual wage
- Burial Expense – Up to \$4,000

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Stay At Work/Return to Work Assistance Benefits

HB334: Makes assistance for SAW/RTW available by request unless :

- The worker has been determined to be a disabled worker
- The worker has refused a job that the worker is:
 - Physically capable of
 - Qualified to do, and
 - Wages are at least equal to time of injury job
- The worker has actually returned to work
- The worker's claim has been denied, closed or settled

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SAW/RTW assistance

Worker Contact

Determine commitment to return to work

Medical Status Form Review

Determine work abilities and restrictions

Employer Contact

Determine ability to provide transitional work

Facilitate Transitional Employment

Develop transitional job offer

Follow-up

Monitor for readiness to return to TOI job

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Vocational Rehabilitation Benefits

- Eligible for Rehab Benefits if:
 - Disabled Worker – Permanent impairment that precludes worker from TOI job AND has an actual wage loss; or
 - Has a 15% or greater impairment rating and no actual wage loss
- A vocational rehabilitation provider develops written plan for return to work or retraining
- Benefits paid for specified period in plan up to 104 weeks
- Paid at same rate as TTD benefits – 66 2/3% of TOI wage – capped at SAWW

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Compromise Settlements & Lump Sum Payments

Biweekly payments are the rule

Lump sum payments are the exception

Certain settlements and lump sum payments are allowed

All settlements must be approved by the Department or the Workers' Comp Court

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Department May Approve

- All benefits if insurer disputes initial compensability of a claim
- PPD benefits
- PTD benefits only if worker demonstrates financial need
- Future medical benefits if an insurer disputes continued liability for medical benefits and there is a reasonable dispute over the medical treatment or compensability

HB334 – allows settlement of future medical benefits on accepted claims if mutual agreement

Requires rationale for settlement

Statement of best interest of parties

Signed acknowledgment of worker

- All settlements must be converted to present value

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Dispute Resolution Mediation

- Purpose – Resolve disputes at lowest level possible
- Any and all benefit disputes – including medical disputes over authorization or payments of medical bills
- Mandatory
- Informal
- Non-Binding
- Confidential
- 80% resolution rate

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Workers' Compensation Court

- Effective July 1, 1975 – Legislature established the Workers' Compensation Court
- Eliminated conflict of interest in Division of Workers' Compensation
- Appeals go directly to the Montana Supreme Court
- Eliminated expense and delay of District Courts

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THE END QUESTIONS?

References:

Montana Workers' Compensation Manual by Norman H. Grosfield, 1979, published by the State Bar of Montana

Workers' Compensation Compendium, 2005-06, Volume One and Two, John F. Burton, Jr., Editor, Workers' Disability Income Systems, Inc., Princeton NJ

Workers' Compensation Laws, 2nd Edition, June 2009, Copyright by the International Association of Industrial Accident Boards and Commissions (IAIABC) and the Workers' Compensation Research Institute (WCRI)

Montana Code Annotated, 2011, Title 39, Chapter 71, effective July 1, 2011