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SUMMARY OF LOUISIANA WORKERS' COMPENSATION LAWS

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GENERAL DUTIES OF EMPLOYERS

- **Louisiana Revised Statutes 23:1306:** requires employers to notify the Office of Workers' Compensation within ten (10) days of actual knowledge of an injury resulting in death or lost time in excess of one week after the injury. This rule applies even if no claim for workers' compensation benefits has been filed.
 - The form generally used for this purpose is a Form 1007 Employer First Report of Injury/Illness (a copy of which is attached for your ready reference).
 - If an employer elects not to use the Form 1007, he must provide, at the minimum, the following information: (1) The name, address, and business of the employer; (2) The name, Social Security number, street, mailing address, telephone number, and occupation of the employee; (3) the cause and nature of the injury or death; (4) The date, time, and the particular locality where the injury or death occurred; (5) The wages, as defined in R.S. 23:1021(11), the worker was earning at the time of the injury.
 - All information and records submitted pursuant to this Section shall be confidential and privileged, shall not be public records, and shall not be subject to subpoena. However, such information or records may be used to compile statistical data wherein the identity of the individual or employer is not disclosed.

GENERAL DUTIES OF THE EMPLOYEE

- **Louisiana Revised Statutes 23:1301:** This statutory provision provides that "No proceeding under this Chapter for compensation shall be maintained unless notice of the injury has been given to the employer within thirty days after the

date of the injury or death. This notice may be given or made by any person claiming to be entitled to compensation or by anyone on his behalf.”

- Despite the mandatory language of this provision, it is rarely enforced against employees.
- In order to benefit from this provision, the employer must show that it was prejudiced by the lack of notice.
- When supervisor(s) and co-employees are aware of the incident and should know that the claimant might have an injury, an employer cannot assert that it was prejudiced by alleged lack of notice.

THE CLAIM PROCESS

- **Compensable Injury, Definition:** A compensable injury is defined as a personal injury by accident arising out of and in the course of employment.

- The term “accident” is statutorily defined as “an unexpected or unforeseen actual, identifiable, precipitous event happening suddenly or violently, with or without human fault, and directly producing at the time objective findings of an injury which is more than simply a gradual deterioration or progressive degeneration.” See Louisiana Revised Statutes 23:1021(1).
- Certain occupational diseases are also compensable. Specific rules concerning the compensability of occupational diseases are set forth in Louisiana Revised Statutes 23:1031.1.



- **Initiation of a Claim:** Workers' compensation claims made be initiated by either a Form 1008 Disputed Claim for Compensation (a copy of which is attached for your ready reference) or a formal petition.
 - Mailing of the form or petition constitutes initiation of the claim.
 - If a claimant chooses not to use the Form 1008, the following information must, at a minimum, be included in the petition:
 - ✓ The names and addresses of the parties.
 - ✓ A statement of the time, place, nature, and cause of the injury, or such fairly equivalent information as will put the employer on notice with respect to the identity of the parties.
 - ✓ The specific compensation benefit which is due but has not been paid or is not being provided.
 - Under prior law, upon receipt of the Form 1008 or petition, the claim would be assigned for a mediation conference within fifteen days of receipt of the form specifying the proper parties unless all parties agree to waive the mediation conference. If the mediation conference was not successful, the Form 1008 or Petition would be served on the defendant(s) and litigation of the claim would proceed.
 - Act 48, effective May 16, 2006, revises the procedures for filing a workers' compensation claim to allow faxing and/or e-mailing a Form 1008 Disputed Claim for Compensation and Answer. Act 48 also revises the procedure for scheduling a mediation conference, and provides that the matter will be set for an initial mediation conference only if the injured employee requests such a mediation. If a mediation is not requested, service of process must be affected in any

manner provided by law or by certified mail. Act 48 further provides for a mandatory pre-trial mediation – a mediation which must be attended by all parties, in person.

- Generally, claims are initiated by employees or their family members. However, Louisiana law does permit employers to initiate claims under certain circumstances (e.g., when an employer believes that benefits should be terminated, or to assert an offset.)
- **Responsive Pleadings:** A defendant who is served with a Form 1008 or Petition must file responsive pleadings within fifteen (15) days of receipt of the form or petition. A defendant who wishes to file exceptions should file them with the answer. If responsive pleadings are not timely filed, a default judgment may be taken against the employer.

- Affirmative defenses available to an employer should be listed in the Answer and include:

- ✓ An employee's willful intention to injure himself or to injure another.
- ✓ An injured employee's intoxication at the time of the injury, unless the employee's intoxication resulted from activities which were in pursuit of the employer's interests or in which the employer procured the intoxicating beverage or substance and encouraged its use during the employee's work hours.
- ✓ An injured employee who was the initial physical aggressor in an unprovoked physical altercation,



unless excessive force was used in retaliation against the initial aggressor.

- ✓ An injured employee's deliberate failure to use adequate guard or protection.

- **Discovery:** Discovery in a Louisiana workers' compensation claim follows the same rules and guidelines as any other civil suit in Louisiana. Methods of discovery include: Interrogatories, Requests for Production of Documents, Requests for Admissions, Depositions, Subpoenas and the like.

- In terms of impeachment evidence (such as surveillance videos and the like), same is generally not discoverable until after the plaintiff has been deposed. *See Wolford v. Joellen Smith Psychiatric Hospital*, 693 So.2d 1164, 96-CC-2460 (La. 5/20/97).

- **Trials: Louisiana Revised Statutes 23:1310.8** provides that "The workers' compensation judge may have a full hearing on the petition, and take testimony of physicians and others relating to the permanency or probable permanency of the injury, and take such other testimony relevant to the subject matter of such petition as the workers' compensation judge may require. The workers' compensation judge may consider such petition and dismiss the same without a hearing if in his judgment the same shall not be set for a hearing."

- Expert Testimony: At the hearing, medical or physical rehabilitation evidence may be presented by providing certified copies of medical records, by a verified or declared report, by deposition or by live testimony.

- The Burden of Proof, In General: At trial, the plaintiff has the burden of prove the following by a preponderance of the evidence: (1) an accident; (2) a disability; and (3) a causal connection between the two.

- Heightened Standards of Proof: Employees bear a heightened standard of proof (called the “Clear and Convincing” standard) for mental injury claims, temporary total disability claims, permanent and total disability claims and hear-related or perivascular injuries. Employers must satisfy this heightened standard to succeed in defeating a claim based on a claim that the employee was unreasonable in refusing to submit to treatment or physical rehabilitation or that the employee’s misconduct is the cause of the continued disability.
- Presumptions: Louisiana statutory law affords employees several presumptions to make the burden of proof easier. For example, there is the presumption of employment status if an individual is rendering service for another in any trade, business or occupation covered by the workers’ compensation laws.

- **Motions for New Trial:** Motions for new trial are entertained by Louisiana workers’ compensation judges. Such motions must be filed within 7 days. The 7 day period commences to run on the day after the judgment was signed or on the day after the district office has mailed the notice of judgment as required by Louisiana Code of Civil Procedure Article 1913, whichever is later.



- **Appeals:** Louisiana Revised Statutes 23:1310.5 provides that any party feeling aggrieved by the workers’ compensation judge’s order, decision, or award has the right to take an appeal to the circuit court of appeal for the judicial district elected by the claimant upon the filing of the petition. The motion and order for appeal shall be filed with the district

office assigned to handle the claim, which shall be responsible for preparation of the record for the appellate court.

- If the appellant desires to suspend the effect of the judgment, the appeal must be filed within thirty days.
 - If the appellant desires to appeal the judgment, but does not wish to suspend the effect or execution of the judgment, the appeal must be filed within sixty days.
 - Appeal delays commence to run on the day after the judgment was signed or on the day after the district office has mailed the notice of judgment as required by Louisiana Code of Civil Procedure Article 1913, whichever is later.
- **Settlements:** A lump sum payment or compromise settlement in exchange for full and final discharge and release of the employer, his insurer, or both from liability under this Chapter shall be allowed only: (1) Upon agreement between the parties, including the insurer's duty to obtain the employer's consent; (2) When it can be demonstrated that a lump sum payment is clearly in the best interests of the parties; and (3) Upon the expiration of six months after termination of temporary total disability. However, such expiration may be waived by consent of the parties (which it often is). See Louisiana Revised Statutes 23:1271.
 - Louisiana Revised Statutes 23:1272 sets forth specific requirements and procedures which must be followed when a lump sum settlement is entered into by the parties. This provision requires that the settlement be presented to the workers' compensation judge for approval through a petition signed by all parties and verified by the employee or his dependent, or by recitation of the terms of the settlement and acknowledgment by the parties in open court which is

capable of being transcribed from the record of the proceeding.

- If a suit has been filed against a third party pursuant to the provisions of Louisiana Revised Statutes 23:1101, the district court hearing the third-party suit shall, in addition to a workers' compensation judge, have the authority to approve a lump sum or compromise settlement of the workers' compensation claim under the same conditions and terms set forth in this Section for approval of such settlements by a workers' compensation judge, and such authority shall include approval and establishment of the credit due the employer.
- All compensable medical expenses incurred prior to the date of the settlement shall be paid by the payor unless the terms of the settlement specifically provide otherwise.

BENEFITS RECOVERABLE

- **Louisiana Revised Statutes 23:1221:** Louisiana Revised Statutes 23:1221 sets forth the various types of disability benefits recoverable. Such benefits include the following:

- Temporary Total Disability Benefits: Temporary Total Disability Benefits are awarded to an employee as a result of an injury which produces temporary total disability such that the employee cannot engage in any self-employment or occupation for wages, whether or not the same or a similar occupation as that in which the employee was customarily engaged when injured, and whether or not an occupation for which the employee at



the time of injury was particularly fitted by reason of education, training, or experience. Such benefits total sixty-six and two-thirds (66-2/3%) percent of wages during the period of such disability.

- Permanent Total Disability Benefits: Permanent Total Disability Benefits are awarded to an employee who is permanently unable to engage in any self-employment or occupation for wages, whether or not the same or a similar occupation as that in which the employee was customarily engaged when injured, and whether or not an occupation for which the employee at the time of injury was particularly fitted by reason of education, training, and experience. Said benefits are equal to sixty-six and two-thirds (66-2/3%) percent of wages during the period of such disability. Compensation for permanent total disability shall be awarded only if the employee proves by clear and convincing evidence, unaided by any presumption of disability, that the employee is physically unable to engage in any employment or self-employment, regardless of the nature or character of the employment or self-employment, including, but not limited to, any and all odd-lot employment, sheltered employment, or employment while working in any pain, notwithstanding the location or availability of any such employment or self-employment.



- Supplemental Earnings Benefits: Supplemental Earnings Benefits are awarded when, as a result of a compensable injury, an employee is unable to earn wages equal to ninety percent (90%) or more of wages at time of injury. In such cases, an employee is paid sixty-six and two-thirds (66-2/3%) percent of the

difference between the average monthly wages at time of injury and average monthly wages earned or average monthly wages the employee is able to earn in any month thereafter in any employment or self-employment, whether or not the same or a similar occupation as that in which the employee was customarily engaged when injured and whether or not an occupation for which the employee at the time of the injury was particularly fitted by reason of education, training, and experience, such comparison to be made on a monthly basis. Average monthly wages shall be computed by multiplying his "wages" by fifty-two and then dividing the quotient by twelve. The right to supplemental earnings benefits pursuant to this Paragraph shall in no event exceed a maximum of five hundred twenty weeks, but there are other specific grounds for termination of such benefits under the statute.

- Permanent Partial Disability: Provides specific awards to employees for anatomical loss of use or amputation of various body parts. In cases not falling within any of the specific provisions, and where the employee is seriously and permanently disfigured or suffers a permanent hearing loss solely due to a single traumatic accident, or where the usefulness of the physical function of the respiratory system, gastrointestinal system, or genito-urinary system, as contained within the thoracic or abdominal cavities, is seriously and permanently impaired, compensation not to exceed sixty-six and two-thirds (66-2/3%) percent of wages for a period not to exceed one hundred weeks may be awarded. In cases where compensation is so awarded, when the disability is susceptible to percentage determination, compensation shall be established in the proportions set forth in Subparagraph (o) of Louisiana Revised Statutes 23:1221.

- **Medical Expenses:** Louisiana Revised Statutes 23:1121 provides that the employee shall have the right to select one treating physician in any field or specialty. After his initial choice the employee shall obtain prior consent from the employer or his workers' compensation carrier for a change of treating physician within that same field or specialty. The employee, however, is not required to obtain approval for change to a treating physician in another field or specialty. Significantly, Louisiana Revised Statutes 23:1121 requires an employee to submit to medical examinations by the employer's choice of physicians as well.
- **Death Benefits:** Louisiana Revised Statutes 23:1231 sets forth the death benefits which are recoverable by the surviving spouse and/or dependents of an employee. This provision provides as follows: "For injury causing death within two years after the last treatment resulting from the accident, there shall be paid to the legal dependent of the employee, actually and wholly dependent upon his earnings for support at the time of the accident and death, a weekly sum as provided in this Subpart. B. (1) If the employee leaves legal dependents only partially actually dependent upon his earnings for support at the time of the accident and death, the weekly compensation to be paid shall be equal to the same proportion of the weekly payments for the benefit of persons wholly dependent as the amount contributed by the employee to such partial dependents in the year prior to his death bears to the earnings of the deceased at the time of the accident. (2) However, if the employee leaves no legal dependents entitled to benefits under any state or federal compensation system, the sum of seventy-five thousand dollars shall be paid to each surviving parent of the deceased employee, in a lump sum, which shall constitute the sole and exclusive compensation in such cases."
- **When Benefits Are Due:** The first installment of compensation payable for Temporary Total Disability, Permanent Total Disability, or Death are due on the fourteenth (14th) day after

the employer or insurer has knowledge of the injury or death. Supplemental Earnings Benefits are due on the fourteenth (14th) day after the employer or insurer has knowledge of the compensable supplemental earnings benefits. Permanent Partial Disability benefits are due on the thirtieth (30th) day after the employer or insurer receives a medical report giving notice of the permanent partial disability on which date all such compensation then due shall be paid. Medical benefits must be paid within sixty (60) days after the employer or insurer receives written notice thereof. See Louisiana Revised Statutes 23:1201.

- **Penalties and Attorneys' Fees:** Failure to provide payment in accordance with Louisiana Revised Statutes 23:1201 or failure to consent to the employee's request to select a treating physician or change physicians when such consent is required by Louisiana Revised Statutes R.S. 23:1121 shall result in the assessment of a penalty in an amount up to the greater of twelve percent of any unpaid compensation or medical benefits, or fifty dollars per calendar day for each day in which any and all compensation or medical benefits remain unpaid or such consent is withheld, together with reasonable attorney fees for each disputed claim; however, the fifty dollars per calendar day penalty shall not exceed a maximum of two thousand dollars in the aggregate for any claim. The maximum amount of penalties which may be imposed at a hearing on the merits regardless of the number of penalties which might be imposed under this Section is eight thousand dollars. An award of penalties and attorney fees at any hearing on the merits shall be res judicata as to any and all claims for which penalties may be imposed under this Section which precedes the date of the hearing. Louisiana Revised Statutes 23:1201 sets forth specifically how such penalties are assessed.

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