

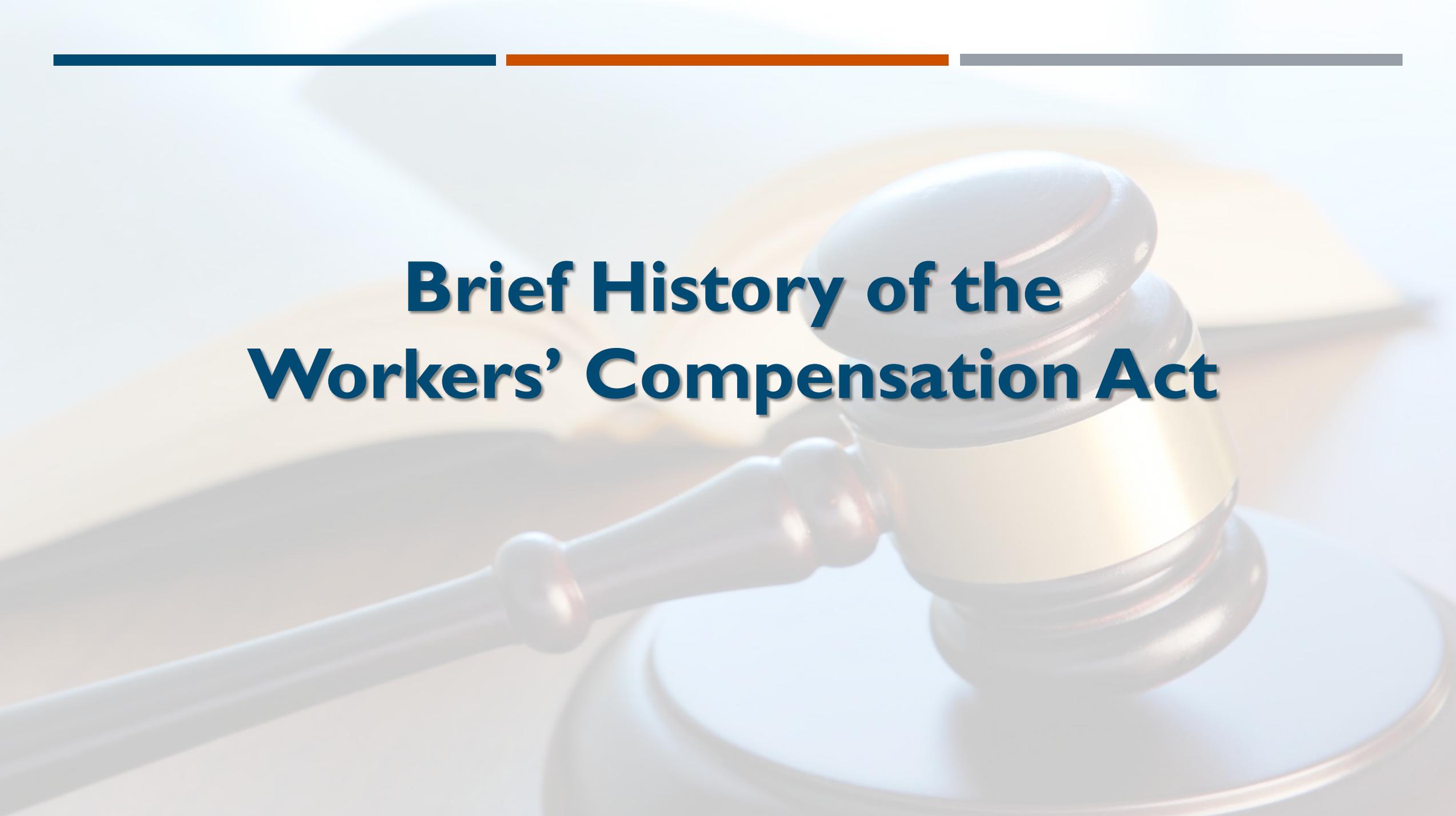
A Closer Look at...

Workers' Compensation in North Carolina

Presented by: Lindsay Underwood

NCACDSS Personnel Conference

September 25, 2019



Brief History of the Workers' Compensation Act



**Teague
Campbell**

A NEW CLAIM

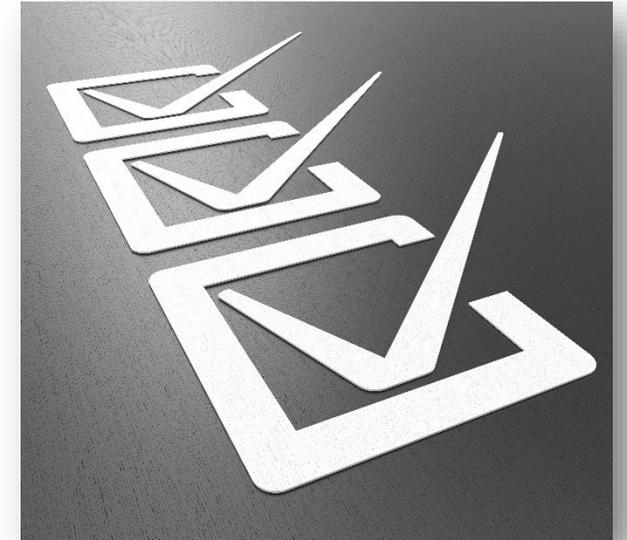
In this section:

- Form 18 Information
- Form 19 Information
- Accepting or Denying a Case

A New Claim

Form 18

- Employee's Notice of Accident
- Technically employees have 30 days from the date of accident (or date of knowledge about an occupational disease) to file Form 18.
- The filing of the Form 18 starts the clock for the 30 days to admit or deny the claim.



A New Claim

Initial Investigation

- Recorded statement
- Witness interviews



****Remember to not only interview the claimant, but talk to the witnesses and dig deep....claims are not always as they initially appear****

Investigation

- Obtaining information from an employee right after an accident happens is extremely important.
- Details can help limit the scope of an injury.
- Information on how the accident happened can help medical providers understand the mechanism of injury.

In the Employee's Own Words

Now asserting a shoulder claim?

In your own words, describe in detail how the injury happened: (include the size and weight of objects, the type and condition of any equipment involved, conditions of the area where the injury/illness occurred)

I WAS COMING DOWN THE STAIRS FROM THE UPSTAIRS OFFICE. WHEN I GOT TO THE 4TH STAIR FROM THE BOTTOM, THE STAIR COVER (COVERS THE WHOLE STEP) SLIPPED OFF OF THE STAIR. THE WHOLE COVER CAME OFF OF THE STAIR. MY FEET WENT OUT FROM UNDER ME AND I FELL BACKWARDS LANING ON MY RIGHT BUTTACK, LOWER BACK UPPER BUTTACK

He Said vs. She Said

REMARKS

Driver of Vehicle #1 was turning left onto Old Tybee Road from Georgia 26/ Highway 80. Driver of vehicle #2 struck vehicle #1 on the rear tires. I asked driver #1 what happened and he said he was turning left onto Old Tybee Road from Highway 80 and he saw vehicle #2 coming towards him. Driver #1 said driver #2, struck the rear passenger side tires of his vehicle. I asked driver #2 what happened and she said driver of vehicle #1 turn in front of her and she tried to stop but she couldn't, and struck vehicle #1. I could not find an insurance card at the scene of the wreck for driver #2. I also called Enterprise Rental Company and they did not have driver #2 insurance information.

ADDITIONAL INFORMATION

while making a left hand turn across a 2 lane other driver was on the inside lane I crossed the road with plenty of time to make my turn she then veered to the outside lane for no apparent reason resulting in hitting me in the rear/thunderbolt PD 912-354-3818/

SUPERVISOR'S INVESTIGATION:

Case # 70322002

A New Claim

Form 19

- Ask who, what, where, when, why and how. Be specific!
- Needs to be filed when employee misses one day of work or incurs \$2,000.00 in medical bills.
- When a Form 19 is filed with the IC, a copy must be sent to the employee, along with a blank Form 18.



Workers' Compensation Claims: Red Flags

- Employed less than 60 days.
- Report of claim is more than 24 hours after accident allegedly occurred.
- Accident occurred in a location where no one could see it or surveillance cameras could not tape it.
- No actual witnesses to the alleged accident.
- Report of claim is made immediately following disciplinary action, termination, and/or any confrontation between the employee and management.
- Other employees and/or management feel claim is questionable.
- Employee has previously told someone about an injury off the job that morphs into an on the job injury.
- Employee wanted something they did not get, i.e. vacation time, a transfer, promotion etc.
- The purpose of the claim of injury appears to be to obtain narcotic pain relievers.
- Claim is not reported until claimant learns s/he needs surgery or some other extensive medical treatment.

A New Claim

Know the Rules

- Employers have 30 days from the filing of the Form 18 to admit or deny a claim by filing a Form 60, 61 or 63.

When in doubt....file the 63!

- Allows payment without prejudice.
- Provides 90 days to make decision from the date the employer first learned of the accident.
- But be aware of consequences.

A New Claim

Accept or Deny?

- Was there an “injury by accident?”
- Note the special caveat for back and hernia claims

SPECIFIC TRAUMATIC INCIDENT

- Occupational disease claims
 1. Exposure to an increased risk AND
 2. Employment conditions were significant contributing factors

A New Claim

Accept or Deny?

Did it “arise out of and in the course and scope of employment?”

- Going and Coming Rule
- Exceptions to the Going and Coming Rule:
 - Special Errand
 - Traveling Salesman
 - Contractual Duty
 - Personal Vehicle
 - Premises



A New Claim

Accept or Deny?

Did it “arise out of and in the course and scope of employment?”

- Break time injuries
- Assaults
 - Co-worker fights
 - Attacks by third parties
- Horseplay
- Athletic/Social Events



A New Claim

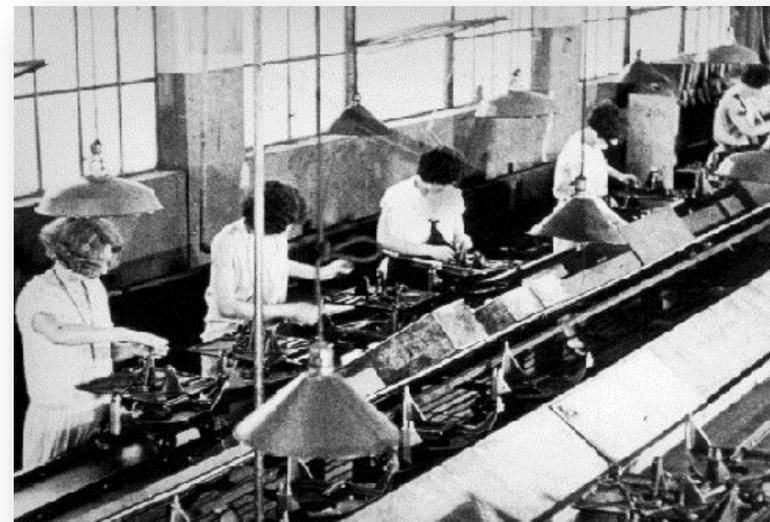
Accept or Deny?

- Pre-existing conditions.
- A claim may still be compensable despite the existence of a pre-existing condition. If an injury materially aggravates or accelerates a pre-existing condition, and causes disability, it is compensable.

Occupational Disease Claims

What is an occupational disease claim?

- An occupational disease is a condition arising gradually from the character of the employee's work.



Enumerated Occupational Diseases

- To establish compensability of a specifically enumerated disease, an employee need only establish exposure to the agent and prove that the exposure caused the condition.
- There are a number of enumerated diseases ranging from anthrax to infection to small pox.

The Catch-All: N.C.G.S. § 97-53(13)

- In 1971, the North Carolina legislature expanded the occupational disease definition by adding a provision to include other diseases and conditions not specifically listed within the statute.
- N.C.G.S. § 97-53(13) provides:
 - Any disease, other than hearing loss covered in another subdivision of this section, which is proven to be due to the causes and conditions which are characteristic of and peculiar to a particular trade, occupation or employment, but excluding all ordinary diseases of life to which the general public is equally exposed outside of the employment.

Causation

- The employment does not have to be the sole cause of the condition. If the employment “significantly contributed to the development of the disease, the condition will be compensable.”
- To prove that the offending agent significantly contributed to the development of the condition, the claimant must show that it was more than a possible contributor.



**Teague
Campbell**

PAYMENT OF COMPENSATION

In this section:

- Temporary Total Disability (TTD)
- Temporary Partial Disability/Wage Loss (TPD)
- Permanent Partial Disability (PPD)
- Bodily Disfigurement/Scarring/Loss of Organ
- Calculating Average Weekly Wage
- Travel
- Termination of Benefits
- Reinstatement of Benefits
- Medical Treatment

Indemnity

Total Disability (N.C.G.S. § 97-29)

- 7 day waiting period.
- 500 week cap from date of 1st disability.
- Can apply for 500+ weeks at week 425.
- Can't receive TTD and PPD at same time.

Partial Disability (N.C.G.S. § 97-30)

- 500 weeks from date of first disability.
- If employee is able to return to work at full wages for a period of time, those weeks do not count against the 500 week cap.
- Any weeks of TTD paid is deducted from 500 weeks.

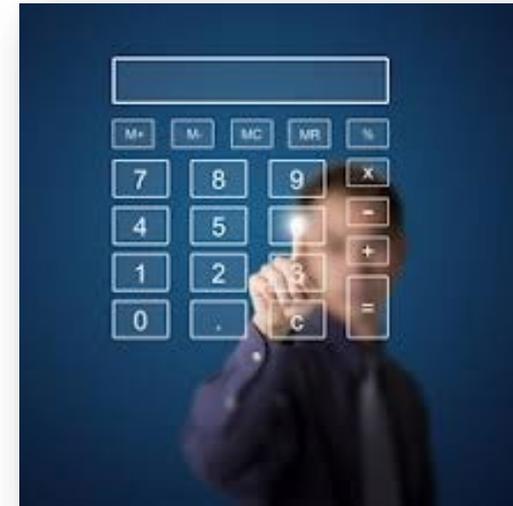
Permanent Partial Disability (N.C.G.S. § 97-31)

- MMI and ratings.
- Bodily disfigurement.
- Damage to organs.

Indemnity

Calculation of Average Weekly Wage

- Get it right first to avoid issues later.
- 5 ways to calculate.
- Must produce within 30 days of request.



Travel Reimbursements

- Form 25T

Termination of Weekly Benefits

- **Return to Work**
 - If employee returns to work with restrictions use Form 28T.
 - If employee returns to work without restrictions use Form 28.
 - Getting the employee back to work:
 - Job description/approval
 - Suitable employment
- **Form 24**
- **500 week cap is hit**

Medical Benefits

- Employees are entitled to have the medical treatment they undergo paid for by the employer. Employers have the right to direct medical care, however, an employee has a right to request a second opinion evaluation. This procedure requires the employee to first contact the defendants and make a request in writing for a second opinion evaluation. The parties are given 14 days to work out an agreement on selection of a doctor to perform the evaluation and, if an agreement is not reached, the employee can file a motion with the I.C. to authorize the second opinion.
- Defendants have the absolute right to compel an independent medical evaluation (IME) in any case, even one that is denied. Employers get to pick the IME physician and are allowed to engage in direct communications with the IME physician. If the claimant does not attend the IME, defendants may file an Application to Suspend Benefits where applicable.

The Hearing Process



The Hearing Process

- Mediated Settlement Conference
- Pre-Trial Agreement
- Lay Witnesses
- Medical Depositions
- Contentions



**Teague
Campbell**

SETTLEMENT AGREEMENTS

In this section:

- Form 26A
- Clincher Agreements

Settlement Agreements

Form 26A

- Employee remains with the insured
- 2 years for change of condition
- Payment of PPD rating only

Clincher Agreement

- At least 10% over PPD rating
- Requires Industrial Commission approval
- Resignations and/or Releases of employment claims



**Teague
Campbell**

MISCELLANEOUS

In this section:

- Contact with Physicians
- Safety Rules

Contact with Physicians

- In general, information requested from the treating physician must be related to the employee's particular injury or disease, reasonably related to the injury or disease, or related to an assessment of the employee's ability to return to work as a result of the injury or disease. An employer/carrier may request medical records directly from the healthcare provider. In compensable cases, employee authorization is not necessary.



Safety Rules

- N.C.G.S § 97-12 provides a 10% reduction in compensation if employee's injury/death was caused by employee's willful failure to use safety device, to perform statutory duty, or to abide by safety rules adopted by the employer and approved by the Industrial Commission.
- Few employers have benefited from this provision due to a lack of guidance on how to have their safety rules approved by the Industrial Commission.

How to Get the 10% Deduction

- The rules shall comply with the general provisions of the safety rules outlined by ANSI and OSHA.
- The rules shall be filed by the employer in writing with the Commission's Safety Education Director.
- The rules shall be reviewed by the Safety Education Director of the Commission.
- If the rules are approved by the Safety Education Director, the employer will receive a certificate of approval.
- An employer may always revise and resubmit their rules if they are not approved.



Thank You



Lindsay Underwood

Raleigh Office

(p) 919.873.0166

lunderwood@teaguecampbell.com