



## IMPORTANT UPDATE ON IMPAIRMENT RATING EVALUATION (IRE) CASES

Are you up-to-date on the rights of your members who have been hurt at work and are collecting **workers' compensation**? Changes to the Workers' Compensation Act ("the Act") and recent court decisions have significantly altered the rights of some injured workers.

### Background

In 1996, the Pennsylvania legislature made a number of amendments to the Workers' Compensation Act. These amendments, commonly known as Act 57, were primarily employer friendly changes to the Act. One such change was the Impairment Rating Evaluation ("IRE") section. You may have heard of the "500 weeks" or "10 year" limit in workers'

compensation cases. This restriction limited workers' compensation payments to only 500 weeks if an evaluation deemed the injured worker only "partially" disabled. Under this provision, insurance companies could send injured workers to an IRE. If the IRE determined that the impairment was less than 50%, then insurance companies would deem the person to be on "partial" disability instead of total disability and could stop paying benefits after 500 weeks expired.



### Changes to the Impairment Rating Evaluation

On June 20, 2017, the Pennsylvania Supreme Court invalidated the IRE provisions of the Workers' Compensation Act in *Protz v. Derry Area School District*. This was a major victory for injured workers. Questions soon arose about how the *Protz* decision would apply to injured workers who had already had their status changed from total disability benefits to partial disability benefits.

Although there are numerous cases pending seeking clarification on these issues, as of now, the courts have given us some direction.

- In cases that were pending when *Protz* was decided, (June 20, 2017) a claimant's benefits will be reinstated to total disability status as of the date that the IRE took place. This means that the injured worker has not used any of his or her 500 weeks of partial disability.
- If the claimant's case was not pending at that time, and claimant filed to reinstate benefits subsequent to the *Protz* decision, their benefit status is reinstated to total disability benefits as of the date that they filed their petition. However, in order the file for reinstatement, Claimant must still

be either within the 500 weeks of partial disability or within three years of the last payment of workers' compensation benefits.

## Legislative Changes

In October 2018, the legislature passed a “new” Impairment Rating Evaluation section hoping to remedy the constitutional issues that plagued the section under Act 57. Called Act 111, the “new” IRE that permits an employer to modify an employee’s status from total disability to partial if the claimant’s impairment rating is less than 35%. Act 111 also permitted the employer to take a credit for all the weeks of partial disability that were paid under the old IRE section of the law. This is the new battleground for injured workers.

## Not So Fast- Courts’ Reaction to Act 111

Recent court decisions have limited the reach of Act 111. For example, the Commonwealth Court has held that the employer cannot rely on an IRE that took place prior to the enactment of Act 111 (October 24, 2018) to modify a claimant’s benefit status to partial. In other words, an employer cannot rely on an IRE performed under the old IRE statute in an attempt to put Claimant back on partial disability.

Additionally, if the employer does not invoke Act 111 by requesting a new examination, they cannot avail themselves of the credit provisions the new Act. However, if the employer does request a new examination pursuant to Act 111, and the Claimant is 35% disabled or less, (1) the Claimant’s status revert back to partial disability and (2) the employer will be permitted a credit for the weeks of partial disability benefits that it previously paid under the prior IRE section of the Act.

There are a number of cases pending before the courts regarding application and retroactivity of both the “old” IRE provision and the “new” IRE provision, including constitutional challenges to the issue of whether employers and insurers can apply the “new” IRE provisions to worker injuries that occurred prior to its inception, October 24, 2018. Over the next couple of months, we expect the courts to provide more clarity on the application of these provisions of the Workers’ Compensation Act.

## What Should You Do?

Because of these ever-evolving changes to workers’ compensation law, it is important for your members to have a trusted attorney help guide them through this process. **Galfand Berger** has been handling workers’ compensation matters for over 75 years. We are happy to present seminars to your members or union leadership explaining rights to workers’ compensation.



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