

IREs Held as Unconstitutional in Workers' Compensation Cases

PUBLISHED ON
June 26, 2017

The Pennsylvania Supreme Court last week drastically altered the landscape for workers' compensation carriers and created future uncertainties when it struck down aspects of the Workers' Compensation Act.

In a case [Barley Snyder](#) attorneys have been closely monitoring, the state's highest court held in [Protz v. WCAB \(Derry Area School District\)](#) that the impairment rating evaluation (IRE) section of the act was an unconstitutional delegation to the American Medical Association (AMA).

The decision effectively ends the practice of limiting an injured worker's wage loss payments through the IRE process. In addition to the changes for workers' compensation carriers, Protz adds uncertainty to future discussions about settlement value and reserve calculations. The decision is also likely to lead to additional litigation, as employees whose benefits have already been affected by IREs challenge them retroactively.

Since 1996, the Workers' Compensation Act has permitted insurance companies to request that an injured worker undergo an IRE once he or she has received 104 weeks of temporary total disability benefits. The Pennsylvania Bureau of Workers' Compensation would then assign the IRE to a physician, who would use the AMA Guides to the Evaluation of Permanent Impairment to determine the injured worker's level of impairment. So long as the injured worker had reached maximum medical improvement and was determined to be less than 50% impaired by the work injury, the benefits would then be converted to a "partial" rate. That partial rate would only be payable for 500 additional weeks. The IRE process effectively provided a cutoff after 604 weeks for many injured workers without the employer proving full recovery or earning power.

The Protz court held that the IRE section of the act was an unconstitutional delegation to the AMA. Accordingly, in Pennsylvania, IREs have no legal consequence for workers' compensation claims, and the bureau already has announced that it will stop assigning them to physicians. To limit future workers' compensation exposure, employers must obtain a full recovery opinion, make work available, hope the injured worker obtains another job, or modify the benefit using an earnings power assessment and labor market survey. Absent these steps, benefits are now payable for the life of the injured worker.

In the wake of the Protz case, what happens to employees who have already received 604 weeks of benefits or who are currently within the 500-week partial rate period following an IRE? The general consensus appears to be that, if the IRE has been litigated to decision and not appealed, the injured worker is probably out of luck, as he or she has waived the issue. If a recent IRE is still up on appeal, the IRE is now invalid. Employees whose benefits were limited automatically, however, without litigation, remain in an uncertain status and reinstatement petitions will likely flood the bureau.

If you have any questions about the Protz case or how it could affect your business, please reach out to [Joshua L. Schwartz, Esq.](#)

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