The End of the IRE Process (as we know it)

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Pennsylvania, like many other states, has a statutory section of its Workers' Compensation law that is devoted to the designation of an impairment rating for an injured worker who is collecting Workers' Compensation benefits. The impairment rating process is one of the only methods by which an employer can "cap" or limit ongoing recovery of Workers' Compensation benefits for an injured worker whose disability, or "whole body impairment," is deemed to be less than 50%.

The PA Workers' Compensation Act, specifically section 306 (a.2), set forth the language that empowered the Bureau of Workers' Compensation to facilitate the process of employers obtaining IRE designations, by "assigning" IRE requests to medical care providers/reviewers, who could examine an injured worker, and provide a percentage assessment of impairment. Again, through this system, if the designation or "impairment rating" was less than 50%, the Employer was automatically entitled to a 500 week cap on ongoing wage loss benefits, provided the employer issued its request for the IRE in a timely manner. The Act required that requests for IREs had to be issued within 60 days of the Claimant's receipt of 104 weeks of Workers' Compensation wage loss benefits, in order to be entitled to an automatic cap in the event the IRE result is less than 50%. Needless to say, obtaining this sort of cap on benefits, without the need for litigation, was an excellent tool for employers to utilize.

In the landmark decision in *Protz v. WCAB (Derry Area School District*), issued June 20, 2017, the Supreme Court of Pennsylvania determined that the language of Section 306 (a.2), was unconstitutional – because it had the effect of delegating legislative authority to the Dept. of Labor & Industry, Bureau of Workers' Compensation. Therefore, the Bureau has stopped the process of IRE assignments, and in turn essentially halted all IRE filings/requests – effective immediately (see attached email from the Bureau).

How the defense bar, Workers' Compensation Judges, and the state legislature (not to mention the insurance lobby) will respond to the ruling in *Protz* is difficult to predict at this early stage. Perhaps in the fall session of 2017, a proposed amendment will be pushed through the State legislature. Or, in the meantime, a crafty defense attorney may find a way to successfully argue that, despite the ruling in *Protz*, the policy behind IREs, and the idea of capping ongoing benefits where an injured worker's impairment rating is less than 50%, should remain in effect, perhaps through another method. For the time being, the ripple effects of the *Protz* Decision are being felt by employers and insurers across the state.

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