

# BELOW THE RED LINE

WORKERS' COMPENSATION UPDATE  
"WE'VE GOT YOU COVERED!"

March 2024

## A WORD FROM THE PRACTICE CHAIR

Since I last was able to talk to you via this wonderful newsletter, spring has officially sprung! But as is customary in the Midwest, winter does not want to let go just yet. My friends up in Rockford had several inches of snow last week and that just sounds terrible this time of year. I hope you are making Easter plans and enjoyed some Spring Breaking with friends and family. I had the opportunity to spend some time in balmy, sunny .... Indianapolis. The good news: no plane ride or need to go through security at the airport. The bad news: I wore a jacket most days and did not get a tan. But, I must admit, Indy is a fun town and the family and I did enjoy our time. Good food, great people, a flexible schedule and the time to unplug for a little bit and focus on family. I hope you also have the same opportunity this season. You deserve it, as does your family.

This month's newsletter author is [Mollie Bowman](#), an associate who joined our Edwardsville office last year. Mollie and I share an affinity for winding down after a long day by watching hockey. Any fan of hockey is a friend of mine. Mollie dives into Section 11 of the Act, which

deals with an employer's intoxication defense. This is a handy reminder and reference article as this scenario does not come up every day but the defense can be crucial in defense of a workers' compensation claim. In my experience, when presenting an intoxication defense for an employer at the time of trial, it is always best to have reliable and credible witness accounts of the employee's impairment at the time of injury if possible. I make this statement because, believe it or not, sometimes medical records and reports clearly showing legal intoxication or drugs in the employee's system at the time of injury is not enough. Please understand, if you don't have such a witness to present at the time of trial, you can still move forward and present your intoxication defense. However, if you have a witness testify, based upon their observation, the employee was impaired at the time of the accident, it will significantly improve the likelihood of a defense outcome. If you are ever faced with a claim where you have evidence the injured worker was under the influence of drugs or alcohol, then contact me or any Heyl Royster attorney and let's discuss the best defense strategy moving forward. We are always here for you!

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# INJURED WHILE WORKING UNDER THE INFLUENCE -- COMPENSABLE?

A Brief Guide to  
Navigating  
Intoxication and  
Injuries on the Job



BY MOLLIE BOWMAN

**W**hat happens when an employee is injured at work but was under the influence of drugs or alcohol when the injury occurred? As with most legal questions, the answer is... it depends. In this article, we will discuss how employers and insurers can navigate a claim involving an intoxicated employee in Illinois.

Under Section 11 of the Illinois Workers' Compensation Act, an employee is not entitled to compensation for work injuries if the employee's intoxication was the proximate cause of the injury. 820 ILCS § 305/11. Specifically, the statute provides: "[n]o compensation shall be payable if (i) the employee's intoxication is the proximate cause of the employee's accidental injury or (ii) at the time the employee incurred the accidental injury, the employee was so intoxicated that the intoxication constituted a departure from the employment." *Id.*

Proximate cause is the known, or sole, cause of an event. Therefore, if an employee's intoxication was the sole cause of the work injuries, that employee is not entitled to any compensation from the employer for those injuries. To illustrate, say that Employee A works for Company Z as a pizza delivery driver. Employee A

consumes alcohol and becomes intoxicated before he leaves to deliver pizzas. Employee A attempts to deliver the pizzas but runs a red light and crashes into another car. There were no intervening events that caused or contributed to the wreck.

Employee A incurred numerous injuries in the crash but because the accident directly stemmed from his intoxication, he would not be entitled to compensation for any of these work-related injuries because his intoxication was the proximate cause of the accident and resulting injuries.

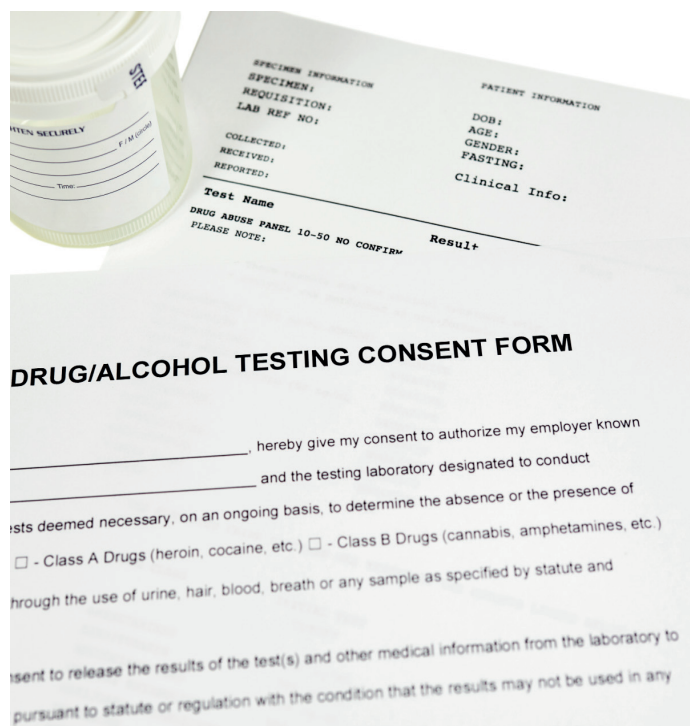
Employers can provide evidence of varying concentrations of alcohol, cannabis, or controlled substances to assist in proving the employee was intoxicated at the time of the accident. If an employee was intoxicated at the time of a work injury, it is crucial for the employer to timely and properly collect evidence of this intoxication to maximize defenses available under the Act. Specifically, under the Act:

Admissible evidence of the concentration of (1) alcohol, (2) cannabis as defined in the Cannabis Control Act, (3) a controlled substance listed in the Illinois Controlled Substances Act, or (4) an intoxicating compound listed in the

Use of Intoxicating Compounds Act in the employee's blood, breath, or urine at the time the employee incurred the accidental injury shall be considered in any hearing under this Act to determine whether the employee was intoxicated at the time the employee incurred the accidental injuries.

820 ILCS § 305/11.

If an employer provides evidence that an injured employee was at or above a certain threshold for alcohol (.08 percent or more by weight of alcohol in the injured employee's blood, breath, or urine), there is a rebuttable presumption that the injured employee was intoxicated at the time of the work accident, and that the intoxication was the proximate, or sole, cause of the employee's injury. Additionally, if the employer can provide "any evidence of impairment due to the unlawful or unauthorized use" of cannabis, controlled substances, and intoxicating compounds, the same rebuttable presumption applies. *Id.*



To prove evidence of impairment from the unlawful or unauthorized use of cannabis, the definition of cannabis is taken from the Cannabis Control Act which is described as:

[M]arihuana, hashish and other substances which are identified as including any parts of

the plant Cannabis Sativa, whether growing or not; the seeds thereof, the resin extracted from any part of such plant; and any compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin, including tetrahydrocannabinol (THC) and all other cannabinol derivatives, including its naturally occurring or synthetically produced ingredients, whether produced directly or indirectly by extraction, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination.

720 ILCS § 550/3(a). The State of Illinois recently legalized recreational cannabis for those over 21 years of age. As recreational cannabis use is now legal, the previously mentioned rebuttable presumption no longer applies in most instances, as the presumption requires the "unlawful or unauthorized use" of cannabis. However, it is important to note that although this presumption is no longer applicable in most work settings, cannabis use may still be the proximate cause of the work-related accident and injuries and therefore may bar a petitioner's claim for benefits.

To prove evidence of impairment from the unlawful or unauthorized use of a controlled substance, the Illinois Controlled Substances Act is informative, which provides that controlled substances include heroin, fentanyl, cocaine, morphine, barbituric acid, amphetamines, salts, and lysergic acid diethylamide, among others. 720 ILCS § 570/401(a).

To prove evidence of impairment from an intoxicating compound, the Use of Intoxicating Compounds Act is informative, which provides that intoxicating compounds include compounds, liquids, or chemicals containing specific chemicals outlined in this Act. 720 ILCS § 690/1.

Proactivity is important once a work injury occurs and there is suspicion that the injured employee may have been under the influence at the time of the accident. Thus, it is vital that an employer properly collect evidence as close as possible in relation to the work accident to prove evidence of impairment. Steps the employer can take include requesting the injured employee take a blood, breath, or urine test. For proof of drug or alcohol use to be admissible at hearing, the test must be performed in accordance with the rules adopted by the Commission and performed by an accredited or certified testing laboratory. 820 ILCS § 305/11(1-6).

For the most accurate and credible results, the employee should undergo testing within 24 hours of the work incident. If there were witnesses to the accident or the employee's demeanor close in time to the accident, employers should solicit witness statements. These statements should describe the accident itself, but also describe the injured employee's behavior prior to and after the accident. Having this



eyewitness information recorded can strengthen an employer's argument of impairment from drugs or alcohol, especially when coupled with positive blood, breath, or urine test results.


It is important to note that if the injured employee refuses to cooperate with drug and/or alcohol testing, there is an additional rebuttable presumption under the Act that the injured employee was intoxicated at the time of the work incident, and further, that the employee's intoxication was the proximate, or sole, cause of the employee's injury. 820 ILCS § 305/11.

In our prior example, if Company Z requested

Employee A take a blood test after the car accident and Employee A refused, it is then presumed that Employee A was intoxicated at the time of the accident and that Employee A's intoxication was the proximate, or sole cause of his work-related injuries.

An injured employee may overcome this rebuttable presumption by showing his or her intoxication was not the sole proximate cause of the work-related injuries. The employee may still be impaired by a substance and intoxication may still be "a cause" of the accident and injuries, but if it not "the cause" the petitioner is not going to be precluded from benefits under the Act. *Id.* To combat the rebuttable presumption discussed in the sections before, an experienced petitioner's attorney will likely attempt to prove that the injured employee's work injuries arose out of and occurred in the course of employment and not as a result of the employee's intoxication.

To illustrate an injured employee combatting rebuttable presumption, let's assume Employee A is intoxicated while working at a construction company. Employee A's job is to operate bulldozers. Employee A is operating his company's bulldozer when suddenly the brakes go out and he crashes. Even though Employee A was intoxicated at the time of the crash, the crash was due to defective company equipment, not due to Employee A's intoxication and benefits would be due.

Illinois law provides employers a reliable defense against injuries occurring while employees are intoxicated at the workplace. However, it is imperative for employers to act once intoxication is suspected so as to best protect their interests and ensure that their alcohol and drug policy is compliant with the law and testing is properly conducted; otherwise, the intoxicated employee may still be compensated for his alleged work injuries. Heyl Royster's workers' compensation practice group is highly skilled in investigating and defending workers' compensation claims, including those involving suspected intoxication at the workplace, and we are happy to provide assistance and guidance with your claims. 

## ABOUT THE AUTHOR



### Mollie Bowman

#### Associate in Edwardsville, IL

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- Liquor Liability & Dramshop
- Toxic Torts & Asbestos
- Workers' Compensation

*Mollie Bowman is a focused litigator dedicated to achieving the best outcomes for her clients.*

Mollie Bowman is a skilled attorney focusing on Toxic Torts & Asbestos, and Workers' Compensation Litigation. Before joining Heyl Royster in 2023, Mollie worked at a highly respected civil and workers' compensation defense firm in St. Louis, Missouri. There, she represented employers in workers' compensation claims, honing her skills and building a solid foundation.

Mollie is a graduate of Southern Illinois University School of Law, where she earned her J.D. in 2022. During her time in law school, she was a member of the SIU Law Journal and clerked during her summers, gaining valuable experience and knowledge along the way.

When she's not working hard at the office, Mollie enjoys unwinding by watching hockey and working on puzzles.

An advertisement for Heyl Royster's Workers' Compensation Team. It features the firm's logo (HEYL ROYSTER) in a red box, the slogan "COMMITTED COLLABORATIVE ACCOMPLISHED POSITIONED" in large bold letters, and a vertical red bar on the right with the text "WORKERS' COMPENSATION TEAM". The main text reads: "WHEN EXPERIENCE MATTERS. If your business, organization, or you as an individual need premier defense services from an industry-leading workers' compensation defense firm, the dedicated legal minds at Heyl Royster are ready to provide you with the legal advice and legal services that you deserve. From complex claims to disputes, causation, and more, our workers' compensation attorneys are experienced litigators ready to come to your defense. Heyl Royster Is Ready To Defend You".

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If your business, organization, or you as an individual need premier defense services from an industry-leading workers' compensation defense firm, the dedicated legal minds at Heyl Royster are ready to provide you with the legal advice and legal services that you deserve. From complex claims to disputes, causation, and more, our workers' compensation attorneys are experienced litigators ready to come to your defense.

Heyl Royster Is Ready To Defend You

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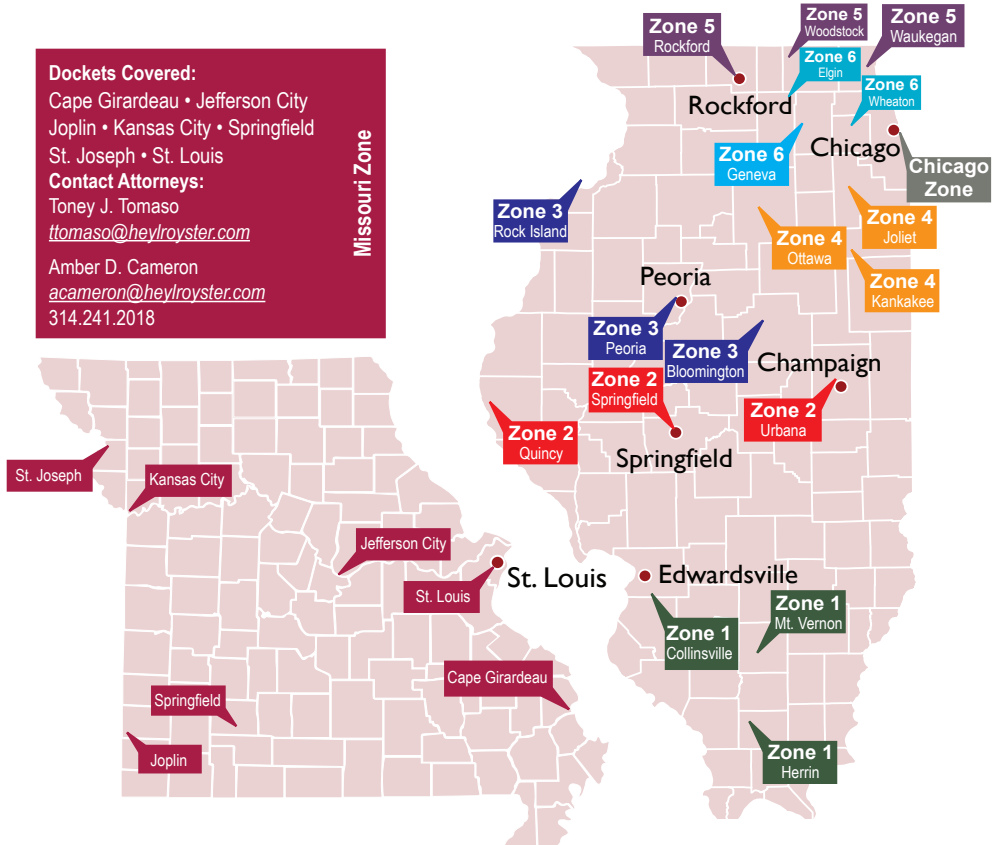
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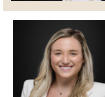
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