

Louisiana Workers' Comp Review

November 4, 2022
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INSIDE

Recent Caselaw

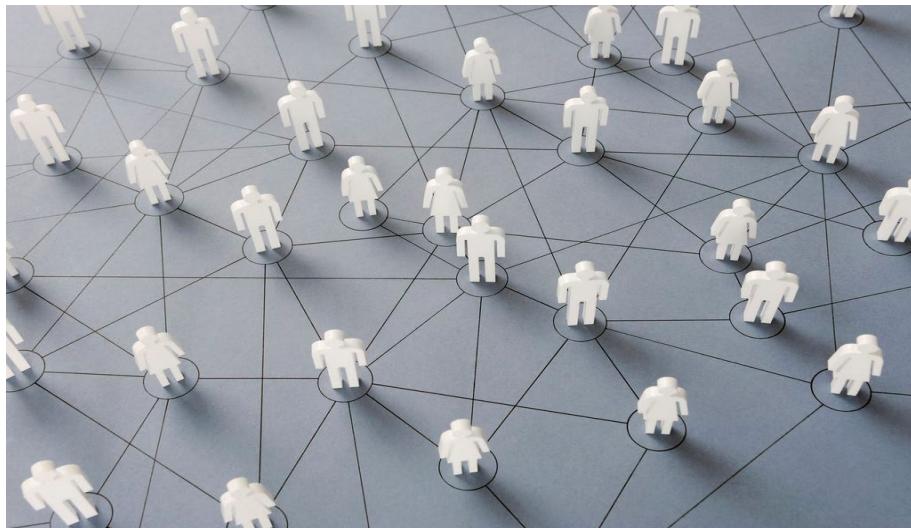
Court finds infection from compensable injection also compensable

Legislative Updates

La. Legislature removes Judge discretion regarding joint stays and continuances

Good News

Louisiana's Unemployment Rate is lowest ever



Quick Bites

Max Comp Rate: \$771.00

Min Comp Rate: \$206.00

Mileage: \$0.62 / mile

Links:

[LA Workforce Commission](#)

[1002 Form](#)

[1007 First Report Form](#)

[1008 Disputed Claim](#)

[1011 Settlement](#)

[1015 IME](#)

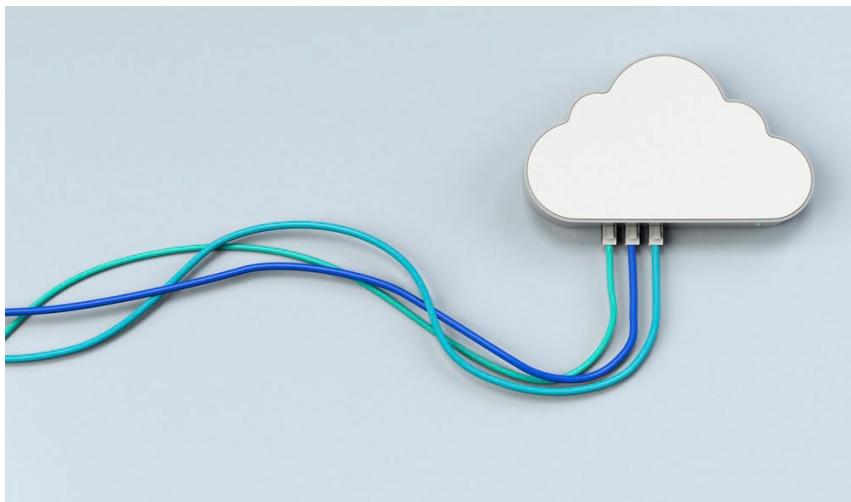
Recent Caselaw

Debra Lenox v. Central Louisiana Spokes, LLC, et al (Third Circuit)

Opinion - Claimant, Debra Lenox, was employed by Central Louisiana Spokes, LLC (Spokes) as a merchandise manager. She claims that on November 22, 2016, while in the course and scope of her employment with Spokes, she felt a "weird pinch" in her lower back. On November 27, 2016, she received an Epidural Steroid Injection (ESI). She later began to experience pain all over her body. A lumbar MRI taken on December 9, 2016 indicated that she had a lumbar spine infection at the L5-S1 levels, which was where she received the ESI. She underwent surgery to drain the abscess and decompress the nerves.

At trial, there was competing expert testimony about the cause of the infection. The Court weighted the testimony of claimant's experts over that of the employers' and found that the infection and resulting treatment were compensable. On appeal, the court noted that when there are two permissible views of the evidence, the factfinder's choice between them cannot be manifestly erroneous. Further, when there are no documents or objective evidence that contradicts a witness' story and the factfinder's determination to credit the testimony of one witness over that of another, that finding can virtually never be manifestly erroneous.

Practically speaking, when two views of evidence are provided, and the trier of fact finds in favor of one view over another, that finding can almost never be "manifestly erroneous," i.e. the burden of proof on appeal. However, a finding of manifest error may be found if documents or objective evidence so contradict a witness's story, or the story itself is so internally inconsistent or implausible on its face that a reasonable factfinder would not credit the witness's story.



Legislative Update

La. R.S. 23:1310 revised to provide for motions to stay and motions to continue in workers' compensation lawsuits

La. R.S. 23:1310.5.1 was recently enacted to provide that when the parties jointly, or when one party files an uncontested Motion to Stay the proceedings, the workers' compensation judge **shall** order a stay of the proceedings as long as the parties agreement continues. The statute additionally provides that the parties must participate in a telephone status conference with the Court at least every six (6) months. Finally, the statute exempts cases stayed under this provision from the provisions of the Louisiana Administrative code regarding abandonment. The same statute was amended to provide that if the parties agree to a continuance of a hearing, mediation, or trial, by jointly filing, or by filing an uncontested motion, the workers' compensation judge **shall** grant the continuance.

In both cases, there is no discretion; the Court is required to grant the relief requested.

Client Successes

Settlement - The injured employee was involved in a physical altercation while in the course and scope of his employment and sustained injuries to his head, neck, and ribs. The employer took the position that the injured employee "provoked" the physical altercation, thereby disqualifying himself from receipt of workers' compensation benefits pursuant to La. R.S. 23:1081(1)(c). The claim was settled for under cost of defense.

Settlement - Injured employee sustained a hand injury, following which the claimant left the job site without reporting his injuries, treated on his own and refused to participate in the workers' compensation process, including failure to answer calls and messages from his employer about his medical treatment. Notwithstanding his actions, Claimant demanded hefty penalties and attorneys' fees. After some back and forth, the claim was settled for a nominal amount



Some Good News

Louisiana's Unemployment Rate is at its lowest point in the history of the state. In fact, over the past four (4) months, new records have been set each month for the lowest unemployment rates in Louisiana's history. In May, the unemployment rate was 4.0%, followed by 3.8% in June, 3.7% in July, and 3.5% in August. Louisiana's unemployment rate currently (as of October 21, 2022) sits at 3.4%, which is below the national average of 3.5%. The labor forces is 2,092,676 and there are 78,850 unemployed. 226,000 jobs have been added or recovered since the COVID-19 pandemic.

About the Author

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Lee M. LeBouef is an Associate Attorney at Leake & Andersson, LLP in New Orleans, Louisiana. Lee graduated from the Paul M. Hebert Law Center – Louisiana State University in 2015. He began his law practice handling mostly small construction disputes for contractors, subcontractors, and homeowners. Since 2017, he has practiced primarily in Louisiana Workers' Compensation defense, handling simple and complex cases for employers, insurers, and third-party administrators, including subrogation. Lee has recently attended the Workers' Compensation Institute Conference in Orlando and the National Workers' Compensation and Disability Conference in Las Vegas.

If you have any questions about Louisiana Workers' Compensation, please contact Lee at your convenience.

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