



**BLEAKLEY  
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**WORKERS' COMPENSATION ALERT**

**TO: Our Clients and Friends**  
**FROM: Bleakley, Cypher, Parent, Warren & Quinn, P.C.**  
**RE: Procedural and substantive changes affecting workers' compensation claims handling and administration**  
**DATE: August 22, 2012**

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**Revised Form-701**

The Workers' Compensation Agency recently released the "Revised WC-701" Form. This is the standard form that is used to provide the Michigan Department of Licensing and Regulatory Affairs with Notice of Compensation Payments. Form WC-701 was recently revised to incorporate the legislative changes relating to residual wage earning capacity. The revised form provides instructions for rate adjustments for Post Injury Wage Earning Capacity (PIWEC). The step-by-step instructions allow for a carrier or employer to identify and calculate a residual wage in situations where there is a post injury wage earning capacity. For your convenience, we have linked you to a copy of the Revised Form WC-701 through our webpage. ([www.bcpwq.com](http://www.bcpwq.com))

**Disability Determinations - Who is a Qualified Expert?**

In a recent Appellate Commission Decision, the Commission analyzed the framework for determining disability and residual wage earning capacity. Peterson v Consumers Energy Company 2012 ACO #31. In Peterson the Michigan Appellate Commission held that a testifying medical doctor was not competent or qualified to render an opinion regarding disability; instead, the Appellate Commission held that

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the medical doctor was only competent to testify to the claimant's medical condition and need for physical restrictions. The Appellate Commission held that it is reasonable for a physician to restrict a claimant's activities, but would not accept a physician's opinion that the claimant is "totally disabled." Instead, the claimant must take the physical restrictions imposed by the physician and "show that those restrictions prohibit him from earning wages in particular jobs suitable to his qualifications and training." Practically speaking, this intensifies the reliance upon vocational proofs to establish disability.

**Proving Disability in Closed Period Cases – Tatar v. Ryder Integrated Logistics, Inc.**

The Appellate Commission also recently addressed the Plaintiff's burden to prove disability during "closed periods." Prior to the issuance of the Tatar v. Ryder Integrated Logistics, Inc., 2012 ACO #43, there was a difference of opinion as to whether or not disability needed to be proved, by way of Stokes proofs, for a "closed period" case. The Tatar opinion disposes of that debate by concisely stating that the plaintiff must establish disability, even in "closed period" cases. Under this holding, the claimant is obligated to prove disability under the controlling Stokes framework, even in "closed period cases." A similar holding was also reached in Peterson.

If you have any questions or would like to discuss in more details workers' compensation claims handling, please do not hesitate to contact any of the attorneys at Bleakley, Cypher, Parent, Warren & Quinn, P.C., directly.