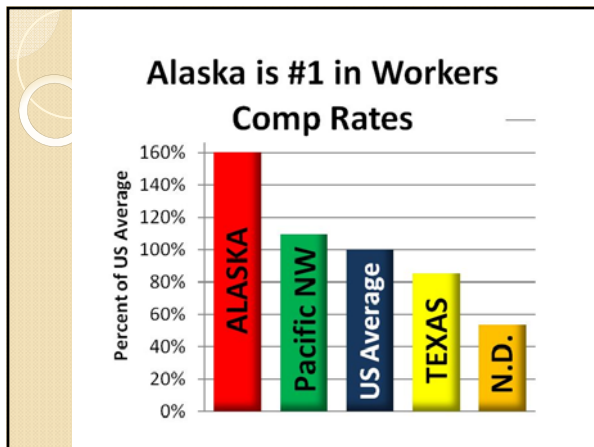


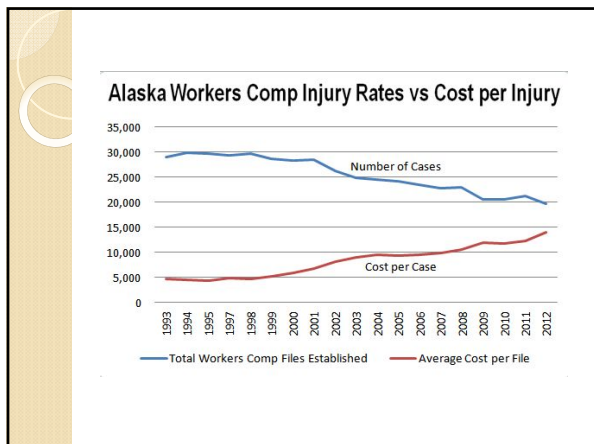
Workers' Compensation

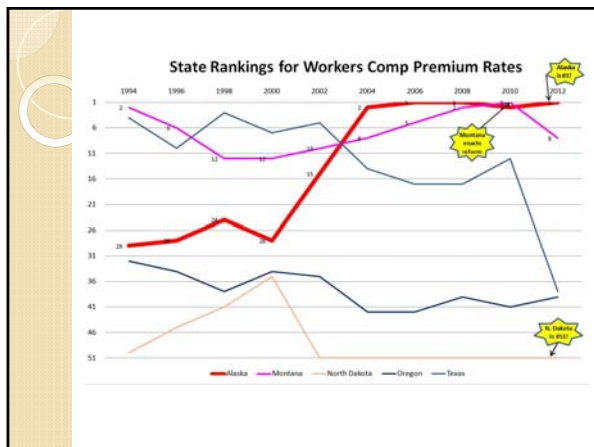
Shelby Nuenke-Davison, Attorney
Chuck Brady, Workers' Compensation Manager

Who Are We and Why Do We Know So Much?

- Shelby Nuenke-Davison, Attorney
 - Thomas M. Cooley Law School
 - 30+ years of workers' compensation defense and appellate work
 - Past president of Workers' Compensation Committee of Alaska
- Chuck Brady, Workers' Compensation Manager
 - 35+ years of workers' comp claims experience
 - 8 years of adjusting Alaska workers' compensation claims
 - Manages workers' compensation programs in the Lower 48
 - Current president of Workers' Compensation Committee of Alaska







- ### What We Hope You Take Away
- A basic understanding of what benefits are available under workers' comp
 - An understanding of your responsibility as an employer
 - A basic understanding of what is and is not considered work-related
 - An understanding of what you can do to affect a good outcome

What Will We Be Discussing?

- An Overview of Benefits
- Reporting Injuries
- Reporting Time Limits
- What Makes an Injury Work-Related?
- Rules and Doctrines
- Affirmative Defenses
- Return to Work Options

An Overview of Benefits

- Medical benefits
- Time loss benefits
 - 80% of average weekly take-home pay
 - \$1,143.00 maximum TTD rate
 - 3-day waiting period
 - Temporary partial disability benefits
- Permanent impairment benefits
 - Based on AMA Guidelines, 6th Edition
 - \$177,000 for 100% disability

An Overview of Benefits

- Reemployment Benefits
 - Up to two years of training
 - Maximum of \$13,300 in costs
 - Weekly stipend
 - Job dislocation benefit
- Death Benefits

Reporting Injuries

- Your responsibility begins when the injury is reported or witnessed by management.
- Make sure your employee gets needed treatment.
- Notify your insurance carrier immediately.
- Investigate the injury and forward the information to your insurance carrier.
- Complete the First Report of Injury and forward it to the Workers' Comp Board within 10 days.
 - Penalty for late reporting
 - Process may differ for EDI

Reporting Injuries

Dave is framing a building, working with hammer and nails. His attention is diverted as he's driving a nail, misses the nail and strikes his knee. The injury is witnessed by two other employees. He's not sure if he needs to see a doctor.



What should you do?

Reporting Injuries

Dave is framing a building, working with hammer and nails and strikes his knee with the hammer. He reports the injury right away and there are witnesses. Dave "walks it off" after a couple minutes, declines treatment, and continues working.



What should you do?

Reporting Injuries

Dave works as a carpenter. He comes to work on Monday walking with a limp and reports that he struck his knee with a hammer six weeks ago and says he has an appointment with his doctor in one hour. This is the first you've heard of it.



What should you do?

Reporting Time Limits

- Anything reported within 30 days is presumed to be timely.
- Presumption of compensability.

What Makes an Injury Work-Related?

- There must be an employer/employee relationship.
 - Independent contractor (care, custody, and control)
 - Volunteers
 - Corporate officer coverage election
- Injury must arise out of employment and/or...
- Occur within the course and scope of employment.

Rules and Doctrines

- Going and Coming rule
- Commercial Traveler Rule
- Bunkhouse Rule and Remote Site Doctrine

Going and Coming Rule

Michelle drives to work, parks her car, and begins walking to her office. It's cold and snowy and she slips and falls on an icy patch, landing on her outstretched hand and injuring her shoulder. She is having difficulty raising her arm and her wrist is swollen.



Is her injury work-related?

Going and Coming Rule

Mitch pulls into his employer's parking lot and for reasons unknown loses control of his vehicle and ends up on top of another one. His airbag deploys and he suffers multiple bruises to his face and torso.



Is his injury work-related?

Going and Coming Rule

- Generally speaking, the commute to and from work is not within the course and scope of employment.
- Generally speaking, the commute to work ends when you arrive on the employer's premises or get out of your vehicle.
- Generally speaking, the commute home begins when you get into your car or leave the employer's premises.

Going and Coming Rule

- Generally speaking, if an employee stops on the way to or from work to perform a work-related task, she will be considered within the course of employment for the duration of the time it takes to accomplish the task, including the necessary deviation in route.
- Commuting to and from work can be considered within the course of employment if it's done in a company vehicle.

Commercial Traveler Rule

Joe is traveling from Anchorage to Fairbanks on a sales call and stops for lunch at the Talkeetna Roadhouse. While walking into the restaurant he trips and falls over a floor mat and strains his ankle.



Is his injury work-related?

Commercial Traveler Rule

Mike is working a 3-week job in Orlando, Florida. One Saturday he decides to make a trip to Walt Disney World and spends most of the day on his feet. At the end of the day his right foot is really sore. X-rays show he has a stress fracture.



Is his injury work-related?

Commercial Traveler Rule

- Generally speaking, when traveling on business, an employee is essentially covered 24/7.
- Injuries and illnesses not normally covered under workers' comp can be compensable when traveling.
- Jurisdiction is employee's home base or state of hire.

Bunkhouse Rule/Remote Site Doctrine

Mark was working at Denali National Park as a cook. He arrived at the beginning of the season and got set up in employee housing. His first night in employee housing he rolled over in his bunk and fell out, fracturing his left wrist.



Is his injury work-related?

Bunkhouse Rule/Remote Site Doctrine

Dennis was working on a crew building a new airport in Akutan. He was terminated for cause and sent home. On his trip back he was getting off a ferry and tossed his bag up onto the dock, injuring his left shoulder. When he got back to Anchorage an MRI determined he had a torn rotator cuff and he filed a claim for injury.



Is his injury work-related?

Bunkhouse Rule/Remote Site Doctrine

Bob works for a drilling company on the North Slope and one day at work he doubles over in pain. He's taken to the clinic and it's determined he had an attack of appendicitis and is flown off the slope so he can get treatment.



Is his injury work-related?

Bunkhouse Rule/Remote Site Doctrine

Bob recovers from his appendicitis and returns to his job on the North Slope where he works two weeks on, two weeks off. After his shift one day he and a bunch of guys organize a basketball game. He takes a 10-foot jumper and coming down from the shot he's fouled, falls to the floor and strains his left knee.



Is his injury work-related?

Affirmative Defenses

- I. Intoxication
- II. Horseplay
- III. Initial Aggressor
- IV. Intentional and Self-Inflicted Injuries

Affirmative Defenses

Intoxication

- 1. **Burden of proof is on the employer**
- 2. **Need proof of intoxication (drug screen)**
- 3. **Injury must be causally related to the intoxication**

Affirmative Defenses

Horseplay

- 1. **Burden of proof is on the employer**
- 2. **Sometimes tough to prove without corroborating witnesses**

Affirmative Defenses

Initial Aggressor

1. Burden of proof is on the employer
2. Sometimes tough to prove without corroborating witnesses

Affirmative Defenses

Intentional and Self-inflicted Injuries

1. Burden of proof is on the employer
2. Need proof the injury was intentional
3. Safety violations
4. Suicide

Return to Work

Light Duty Accommodations

1. Request specific restrictions or abilities
2. Make light duty for a specific period of time
3. Consider having a "light duty" task bank available

Questions?