

EXAM SPECIFICATIONS FOR WORKERS' COMPENSATION LAW

The purpose of the certification examination is to require applicant to demonstrate substantial knowledge of significant legal concepts and corresponding skills in workers' compensation law.

DEFINITION. Workers' compensation law is the practice of law dealing with the rights and duties of employees, employers, health care providers, and insurance carriers arising out of the Texas Workers' Compensation Act. For purposes of this certification, it also includes matters involving workers' compensation claim disputes adjudicated under the Administrative Procedure Act. This includes, without limitation, the representation of clients before the Texas Department of Insurance; Workers' Compensation Division, Texas Workers' Compensation Commission, the State Office of Administrative Hearings, and in suits for judicial review of the decisions of each of these agencies. Each attorney certified in workers' compensation law must understand income benefit payments and medical benefit payments, as well as the administrative obligations of claimants, employers, and insurance carriers. The practice of workers' compensation law requires that practitioners demonstrate a significant knowledge of the injury process, and its effect on the human body

KNOWLEDGE. Applicant must have knowledge of the following: **(Not all of the following exam topics will be covered on the exam. Applicant will be tested on all laws currently in effect at the time of the exam.)**

- I. Course and Scope of Employment
 - A. Workers' Compensation Doctrines
 - 1. Access Doctrine
 - 2. Special Mission
 - 3. Travel To and From Work
 - 4. Personal Comfort and Convenience
 - 5. Violation of Employer Rules
 - 6. Last Injurious Exposure
 - 7. Deviation and Incidental Deviation
 - 8. Idiopathic Injury
 - 9. Accidental Injuries
 - 10. Diseases Occupational
 - 11. Extent of Injury
 - B. Insurance Carrier Defense
 - 1. Act of God
 - 2. Personal Animosity
 - 3. Intoxication
 - 4. Social, Athletic, or Recreational Event
 - 5. Intent to Harm Self or Others

- C. Employment and Coverage
 - 1. Employee Status
 - 2. Independent Contractors
 - 3. Volunteers
 - 4. General Contractors
 - 5. Subcontractors
 - 6. Borrowed Servant
 - 7. Special Employees
 - 8. Staff Leasing Services Act "Leased" Employees
 - 9. Temporary Common Workers Act Employees
- II. Workers' Compensation Benefits-Indemnity Benefits
 - A. Amount of Benefits
 - 1. Average Weekly Wage (All Employees)
 - 2. Multiple Employment
 - 3. Interest
 - 4. Recoupment
 - 5. Contribution
 - 6. Allowable liens
 - B. Types of Benefits
 - 1. Temporary Income Benefits
 - 2. Impairment Benefits
 - 3. Supplemental Benefits
 - 4. Lifetime Income Benefits
 - 5. Death Benefits
 - C. Claimants/Beneficiaries
 - 1. Death Beneficiaries
 - 2. Subclaimants
 - 3. Subrogation
 - 4. Liens
- III. Workers' Compensation Benefits-Medical Benefits
 - A. Entitlement Issues (Scope of Coverage)
 - B. DWC Medical Fee Guidelines
 - C. Treatment Guidelines
 - D. Pre-authorization and Concurrent Review Requirements
 - E. Prohibition Against Private Claims
 - F. Rules for Prescription Medications
 - 1. Initial Pharmaceutical Coverage
 - 2. Employee Rights to Reimbursement
 - 3. Generic v. Brand Name Drug
- IV. Workers' Compensation Benefits -Doctors
 - A. Role of Treating Doctor
 - B. Role of Designated Doctor
 - C. Required Medical Examination Doctors
 - D. Referral Doctors

- E. Doctors Lists and Training
 - F. Peer Review Doctors
 - G. Utilization Review Agents
 - H. Sanctions Against Doctors
- V. Disability
- A. Entitlement
 - 1. Definitions
 - 2. Producing Cause and Sole Cause
 - 3. Pre-existing and Subsequent Injury
 - 4. Termination for Just Cause
 - 5. Bona Fide Offer of Work
 - 6. Concurrent Employment
 - 7. Post Injury Earnings
 - B. DWC Procedures
 - 1. DWC-73/ Work Status Report
 - 2. RME Doctor
 - 3. DWC-69/Certification of Impairment and Maximum Medical Improvement
 - 4. Improvement
- VI. Timely Reporting/Timely Disputing
- A. Claimant Responsibilities
 - 1. Reporting an Injury
 - 2. Reporting an Occupational Disease
 - 3. Filing/Claim for Compensation
 - 4. Good Cause for Delay
 - 5. Dispute of MMI Date and Impairment Rating (90 day rule and exceptions)
 - B. Carrier Responsibilities (including governmental and certified self-insureds)
 - 1. Dispute of Compensability
 - 2. Dispute of MMI Date and Impairment Rating
 - 3. Dispute of SIBs Entitlement
- VII. Employer Rights and Responsibilities
- A. Specific Rights under Sec. 409.011
 - B. Waiver of Right to Contest Compensability
 - C. Report of Injury to Carrier
 - D. Supplemental Report of Injury to Carrier
 - E. Wage Statement
- VIII. Specific Medical Conditions/Injuries
- A. Special Rules/Case Law
 - 1. Mental Trauma Injuries
 - 2. Heart Attack
 - 3. Stroke
 - 4. Hernia

- B. Impairment Ratings
 - 1. AMA Guides
 - 2. Effect of Preexisting Condition
 - 3. Advisory 2003-10 and 2003-10b
- IX. Dispute Resolution (DWC and SOAH)
 - A. Indemnity Benefits
 - 1. Benefits Review Conferences
 - 2. Contested Hearings
 - 3. Appeals to DWC Appeals Panel
 - 4. Agreements
 - 5. Arbitration
 - 6. Settlements
 - 7. Deadlines for DWC Dispute Resolution
 - B. Medical Benefits
 - 1. Prospective and Retrospective Review
 - 2. Role of the IRO
 - 3. Review by the Medical Review Division
 - 4. Procedure and Standing for Filing a Dispute
 - 5. MDR Hearings in the Field Office-Jurisdiction for Fee disputes and for Medical Necessity Disputes
 - 6. Procedure for conducting MDR Hearings and Evidence
 - 7. Review by SOAH
 - 8. SOAH Rules
 - 9. Settlements
 - 10. Agreements
 - 11. Spinal Surgery
 - 12. DWC Fee Guidelines
 - 13. Official Disability Guidelines
 - C. Practice and Procedure for Indemnity and Medical Disputes
 - 1. Venue
 - 2. Jurisdiction
 - 3. Parties
 - 4. Discovery
 - 5. Motion Practice
 - 6. Evidentiary Rules
 - 7. Attorney's Fees
 - 8. Standing
 - 9. Evidence-based medicine
- X. Medical and Anatomic Terms
 - A. Anatomy of the Human Body
 - 1. Orthopedic Anatomy
 - 2. Neurologic Anatomy
 - 3. The Muscle Structure

- B. Diagnosis of Illness and Injury
 - 1. Spinal Injury Diagnosis
 - 2. Upper Extremity Diagnosis
 - 3. Knees, Shoulders, Hips (Large Joints)
 - 4. Feet, Hands, Elbows (Small Joints)
 - 5. Head Injuries
 - 6. Psychological Diagnosis
 - 7. Occupational vs. Ordinary Diseases of Life
 - C. Clinical and Diagnostic Testing
 - 1. Orthopedic and Neurological Clinical Tests
 - 2. Diagnostic Tests
 - 3. Medical Charting Terms
- XI. Judicial Review
- A. Exhaustion of Administrative Remedies
 - B. Jurisdiction
 - C. Parties
 - D. Venue
 - E. Standard of Review
 - F. Pleadings
 - G. Discovery
 - H. Motion Practice
 - I. Evidentiary Considerations
 - J. Voir Dire
 - K. Jury Questions
 - L. Third Party Actions/Subrogation
 - M. Limitations
 - N. Attorneys' Fees
- XII. Legal and Compliance
- A. Administrative Violations
 - B. Penalties
 - C. Hearing Procedures
 - D. Judicial Review
- XIII. Return to Work
- A. Disability Management
 - B. The Medical Disability Advisory, Workplace Guidelines for Disability Duration Medical Disability Advisory (MDA)
 - C. Official Disability Guidelines (Treatment in Workers' Comp Official Disability Guidelines (ODG))
 - D. Return-to-Work Account for Small Employers
 - E. Required Treatment Planning and Guidelines

- XIV. Networks
 - A. Networks and Injured Employees in Networks
 - B. Non-Networks and Injured Employees Not in Networks
 - C. Out-of-Network and Injured Employees Out-of-Network
- XV. General Powers and Duties of Division and Commissioner
- XVI. Office of Injured Employee Counsel
 - A. General Powers and Duties
 - B. Ombudsman Program
- XVII. Self Insurance
 - A. Requirement for Certification
 - B. General Powers and Duties
- XVIII. Administrative Violations
 - A. Prohibited Acts
 - B. Penalties
 - C. Procedures
- XIX. Third Party Liability
 - A. Recovery in Third-Party Action
 - 1. Carrier's Reimbursement Calculation
 - 2. Claimant's Recovery Calculation
 - 3. Liens
 - B. Attorneys' Fees in Third-Party Action
 - 1. Calculation of Fees for Representation of Claimant
 - 2. Calculation of Fees for Representation of Carrier
 - C. Advance Against Future Benefits
 - 1. Calculation of Advance Amount
 - 2. Exhaustion of Advance Amount
 - 3. Carrier Resumption of Benefits
- XX. Exemplary Damages
 - A. Elements of Cause of Actions
 - B. Damages Calculation
- XXI. Non-Subscription/Non-Subscribers
- XXII. 2007 Legislative Changes
- XXIII. 2009 Legislative Changes
- XXIV. Subsequent Injury Fund
- XXV. Other Remedies for Injured Workers
 - A. Third Party Negligence
 - B. Employer Negligence/Gross Negligence
 - C. Intentional Injury by Employer or Co-employee
 - D. Non-Subscriber Negligence

XXVI. Definitions

- A. General Definitions
- B. Definition of Employee
- C. Definition of Intoxication

XXVII. The Texas Disciplinary Rules of Professional Conduct

The ethics questions regarding this topic will involve an array of hypothetical fact situations which will cover several different aspects of ethical issues that arise in the practice of law. The questions will not be limited to the practice of any one specialty area, and consequently, an applicant is advised to be familiar with all provisions of the TDRPC.

SKILLS. Applicant must demonstrate the:

1. Ability to communicate effectively to a variety of audiences (e.g., communications addressed to clients, counsel, courts, administrative agencies, etc.)
2. Ability to develop and evaluate strategies for solving a problem or accomplishing an objective
3. Ability to analyze and apply legal rules and principles
4. Ability to analyze, sort and use facts, and to plan and direct factual investigations
5. Ability to organize and manage a legal task efficiently within time constraints
6. Ability to represent a client consistent with applicable ethical standards
7. Ability to invoke and utilize the procedures normally required in the area of specialty including pleadings and filings