

# **Table of Contents**

## **Volume 1**

### **CHAPTER 1. DEVELOPMENT OF THE ALABAMA WORKERS' COMPENSATION ACT**

#### **I. GENERAL CONSIDERATIONS**

##### **A. BACKGROUND OF COMPENSATION LAWS**

§ 1:1 In general

##### **B. ORIGIN OF ALABAMA WORKERS' COMPENSATION LAW**

§ 1:2 In general

§ 1:3 1819 to 1886: common-law remedies for workers' injuries—  
Limited duty of master to servant

§ 1:4 Requirement of fault

§ 1:5 Common-law defenses

§ 1:6 1886 to 1919: Alabama Employers' Liability Act

§ 1:7 1919-1992: Alabama's first workmen's compensation act

§ 1:8 1992 to present: Alabama's Workers' Compensation Act

### **CHAPTER 2. NATURE AND PURPOSE OF ALABAMA WORKERS' COMPENSATION**

#### **I. GENERAL CONSIDERATIONS**

##### **A. THE PHILOSOPHY OF WORKERS' COMPENSATION LAW**

§ 2:1 Rejection of fault as basis of liability

§ 2:2 Work-connection theory of liability

§ 2:3 Humanitarian theory

§ 2:4 Preemption of master-servant law

§ 2:5 New remedies for injured workers

§ 2:6 Elimination of litigation and expenses

§ 2:7 Protection for employers

§ 2:8 In general

## **CHAPTER 3. VALIDITY AND CONSTRUCTION OF ACT**

### **I. CONSTITUTIONALITY OF WORKERS' COMPENSATION ACT**

- § 3:1 In general
- § 3:2 Early constitutional rulings from other jurisdictions

### **II. CONSTITUTIONALITY OF ALABAMA WORKERS' COMPENSATION ACT**

#### **A. GENERAL CONSIDERATIONS**

- § 3:3 Constitutionality of elective compensation act
- § 3:4 Constitutionality of compulsory coverage

### **III. CONSTRUCTION OF THE ACT**

#### **A. GENERAL CONSIDERATIONS**

- § 3:5 Ordinary rules of statutory construction

#### **B. LIBERAL CONSTRUCTION RULE**

- § 3:6 General application of liberal construction rule
- § 3:7 Limits on liberal construction rule

#### **C. STRICT CONSTRUCTION RULE**

- § 3:8 Exceptions to the Act
- § 3:9 Penalties

#### **D. PERSUASIVE AUTHORITY**

- § 3:10 Minnesota law

#### **E. CONSTRUCTION OF THE 1992 ACT**

- § 3:11 Construction of 1992 Act

## **CHAPTER 4. PERSONS COVERED AND EXCLUDED**

### **I. GENERAL CONSIDERATIONS**

- § 4:1 In general
- § 4:2 Presumption of coverage

### **II. UNCOVERED EMPLOYERS AND EMPLOYEES**

- § 4:3 Election out of coverage

## TABLE OF CONTENTS

§ 4:4	Specific exclusions from Act
§ 4:5	Domestic employees
§ 4:6	Farmers and farm laborers
§ 4:7	Casual employees not in usual course of business
§ 4:8	Small employers
§ 4:9	Public employment
§ 4:10	Election into coverage
§ 4:11	The power to elect
§ 4:12	Methods of election

## CHAPTER 5. MEANING OF “EMPLOYEE”

### I. GENERAL CONSIDERATIONS

#### § 5:1 Definitions

#### A. STATUTORY DEFINITION OF “EMPLOYEE”

§ 5:2	Reason for contract of hire requirement
§ 5:3	Effect of contract of hire requirement
§ 5:4	Bilateral agreements
§ 5:5	Sole proprietors
§ 5:6	Partners
§ 5:7	Corporate officers and shareholders
§ 5:8	Wives
§ 5:9	Offers of employment—Authorized offers
§ 5:10	Conditional offers
§ 5:11	Acceptance of employment—Legal incapacity
§ 5:12	Minors
§ 5:13	Aliens
§ 5:14	Prisoners
§ 5:15	Consideration—Gratuitous workers
§ 5:16	Necessity of payment of wages
§ 5:17	Direct payment of wages

#### B. COMMON-LAW DEFINITION

§ 5:18	Historical development of common-law test
§ 5:19	The “relative nature of work test”
§ 5:20	Basic common-law test—right of control
§ 5:21	Applying control test
§ 5:22	Direct evidence of control
§ 5:23	Actual exercise of control
§ 5:24	Method of payment
§ 5:25	Who furnishes equipment
§ 5:26	Right to discharge
§ 5:27	Independence of claimant
§ 5:28	Power to select helpers

## ALABAMA WORKERS' COMPENSATION

- § 5:29 Other considerations
- § 5:30 Workers' compensation insurance
- § 5:31 Business practices
- § 5:32 Withholding taxes
- § 5:33 Characterization of relationship

### II. APPLYING THE TESTS

- § 5:34 Particular occupations—Mine workers
- § 5:35 Timber workers
- § 5:36 Truck drivers
- § 5:37 Salesmen
- § 5:38 Real estate agents
- § 5:39 Product demonstrators
- § 5:40 Sports officials

### III. MULTIPLE EMPLOYER SITUATIONS

#### A. LOANED EMPLOYEES

- § 5:41 In general
- § 5:42 Presumption against special employment
- § 5:43 Implied consent
- § 5:44 Effect of control
- § 5:45 Effect of duration of employment
- § 5:46 Effect of nature of general employment
- § 5:47 Effects of hiring process
- § 5:48 Effect of contractual language
- § 5:49 Payment of wages
- § 5:50 Whose work is being done
- § 5:51 Transfer of right of control

#### B. JOINT EMPLOYMENT

- § 5:52 In General

## CHAPTER 6. PERSONAL INJURY

### I. MEANING OF “PERSONAL INJURY”

- § 6:1 Requirement of personal injury
- § 6:2 General definition
- § 6:3 Requirement of medical definition
- § 6:4 Prosthetic devices

### II. TYPES OF PERSONAL INJURIES

- § 6:5 External injuries
- § 6:6 Internal injuries, in general

## TABLE OF CONTENTS

- § 6:7 Carpal tunnel syndrome and other cumulative trauma disorders
- § 6:8 Hernias
- § 6:9 Diseases

### III. MENTAL INJURIES

- § 6:10 In general
- § 6:11 Mental injuries following physical injuries—General rule
- § 6:12 Degree of physical trauma required
- § 6:13 Causation
- § 6:14 Necessity of expert testimony
- § 6:15 Physical injuries following mental injuries
- § 6:16 Mental injuries caused by mental stimulus
- § 6:17 Compensation neurosis

### IV. PREEXISTING INJURIES

- § 6:18 General rule of no coverage
- § 6:19 Employment aggravation

### V. SUCCESSIVE PERSONAL INJURIES

- § 6:20 Successive injury issues
- § 6:21 Direct and natural consequence rule
- § 6:22 New injuries
- § 6:23 Aggravations
- § 6:24 Recurrent injuries
- § 6:25 Resolution of disputes regarding successive injuries

## CHAPTER 7. MEDICAL CAUSATION

### I. GENERAL CONSIDERATIONS

#### A. REQUIREMENT OF MEDICAL CAUSATION

- § 7:1 Statutory requirement
- § 7:2 Difference between medical and legal causation
- § 7:3 Two-step medical causation requirement

#### B. MEDICAL CAUSATION STANDARDS

- § 7:4 Proximate cause
- § 7:5 Contributing cause
- § 7:6 Aggravation rule
- § 7:7 Changes in condition

#### C. EVIDENTIARY STANDARDS

- § 7:8 Burden of proof

- § 7:9 Distinguishing gradual and cumulative injuries for purposes of the burden of proof
- § 7:10 Requirement of legal evidence
- § 7:11 Expert testimony—Necessity of expert testimony
- § 7:12 Definiteness of expert testimony
- § 7:13 Effect of expert testimony
- § 7:14 Circumstantial Evidence
- § 7:15 The before and after rule
- § 7:16 The before and after rule in preexisting condition cases
- § 7:17 Lay testimony
- § 7:18 Sufficiency of evidence

## **CHAPTER 8. ACCIDENT**

### **I. THE ACCIDENT REQUIREMENT**

- § 8:1 The “accident” requirement

### **II. THE GENERAL MEANING OF “ACCIDENT”**

- § 8:2 Statutory definition of “ACCIDENT”

### **III. UNEXPECTED AND UNFORESEEN EVENT**

- § 8:3 Intentional injuries
- § 8:4 Unexpected or unforeseen cause or result
- § 8:5 Injuries caused by exposure—Exposure to nonnatural stimuli
- § 8:6 Exposure to natural conditions
- § 8:7 Injuries caused by strain and exertion—Breakage cases
- § 8:8 Heart cases
- § 8:9 Muscular injuries
- § 8:10 Other injuries
- § 8:11 Summary of unexpectedness cases
- § 8:12 *Trinity* case

### **IV. SUDDENNESS OF EVENT**

- § 8:13 In general
- § 8:14 Suddenness of cause or result—Early cases
- § 8:15 Length of suddenness
- § 8:16 *Ex parte Harris*—Coverage for gradual injuries?
- § 8:17 The “ACCIDENT” requirement under the 1992 Act
- § 8:18 Special hernia statute

## **CHAPTER 9. OCCUPATIONAL DISEASE**

### **I. DEVELOPMENT OF DISEASE COVERAGE**

- § 9:1 Common-law theories of liability

## TABLE OF CONTENTS

- § 9:2 Diseases under early compensation law
- § 9:3 Coverage for occupational pneumoconiosis
- § 9:4 Coverage for occupational exposure to radiation
- § 9:5 Coverage for all occupational diseases
- § 9:6 Accidental diseases under current compensation law

## II. MEANING OF “OCCUPATIONAL DISEASE”

- § 9:7 Definition of “disease”
- § 9:8 Temporary disorders and allergies
- § 9:9 Mental diseases
- § 9:10 Statutory definition of “occupational disease”
- § 9:11 Nonaccidental diseases
- § 9:12 Legal causation
- § 9:13 Excessive hazards
- § 9:14 Peculiar-risk test

## III. MEDICAL CAUSATION

- § 9:15 Medical causation—General rules
- § 9:16 Dual causation
- § 9:17 Aggravation rule
- § 9:18 Medical causation—Burden of proof

## IV. DISABILITY AND COMPENSATION FOR OCCUPATIONAL DISEASES

- § 9:19 General rules
- § 9:20 Disablement
- § 9:21 Applicability of schedule
- § 9:22 Apportionment of benefits
- § 9:23 Apportionment of benefits in preexisting condition cases
- § 9:24 Apportionment of benefits in successive-employer cases

## V. PROCEDURE

- § 9:25 Date of injury
- § 9:26 Notice

## CHAPTER 10. ARISING OUT OF EMPLOYMENT

### I. GENERAL CONSIDERATIONS

#### A. MEANING OF “ARISING OUT OF THE EMPLOYMENT”

- § 10:1 Reluctance to define “arising out of”
- § 10:2 Causal connection

**B. LEGAL CAUSATION**

- § 10:3 Legal causation standard
- § 10:4 Proximate cause standard
- § 10:5 Distinguishing occupational hazards from other risks
- § 10:6 Peculiar-risk doctrine
- § 10:7 Increased-risk doctrine
- § 10:8 Actual-risk doctrine
- § 10:9 Positional-risk doctrine

**C. EXPOSURE TO THE FORCES OF NATURE**

- § 10:10 In general
- § 10:11 Lightning
- § 10:12 Hurricanes and other windstorms
- § 10:13 Exposure to other weather conditions
- § 10:14 Animal bites

**D. STREET-RISK CASES**

- § 10:15 Street risks
- § 10:16 Legal causation standard

**E. ACCIDENTAL SHOOTINGS**

- § 10:17 In general

**F. FALLS**

- § 10:18 Legal causation standard
- § 10:19 Compensable falls
- § 10:20 Idiopathic falls
- § 10:21 Unexplained falls

**G. UNEXPLAINED ACCIDENTS**

- § 10:22 In general

**H. ASSAULTS**

- § 10:23 Special assault statute
- § 10:24 Legal causation standard
- § 10:25 Increased risk cases
- § 10:26 Actual risk cases
- § 10:27 Effect of cooling-off period
- § 10:28 Aggressor defense
- § 10:29 Neutral assaults and actual-risk doctrine
- § 10:30 Privately motivated assaults
- § 10:31 Privately motivated assault—Contributed to by employment

**I. IMPORTED-DANGER CASES**

- § 10:32 In general

TABLE OF CONTENTS

**CHAPTER 11. COURSE OF EMPLOYMENT**

**I. GENERAL DEFINITIONS**

- § 11:1 “In the course of employment” requirement
- § 11:2 Statutory limitation on meaning of “in the course of employment”
- § 11:3 Meaning of “in the course of employment”

**A. INJURIES ON EMPLOYMENT “PREMISES”**

- § 11:4 In general
- § 11:5 Meaning of “premises”—Service area
- § 11:6 Areas owned or controlled by employer
- § 11:7 Parking lots owned or maintained by employer
- § 11:8 Bathhouses, changing rooms, and locker rooms
- § 11:9 Common areas
- § 11:10 Employee’s home as part of employment premises—General rule
- § 11:11 Employees required to work at home
- § 11:12 Employees performing incidental activities at home
- § 11:13 Injuries during actual performance of service
- § 11:14 Residences furnished by employer
- § 11:15 Resident employees
- § 11:16 Employees continuously on call
- § 11:17 Employees not on call
- § 11:18 Lodging expenses
- § 11:19 Traveling employees
- § 11:20 Accidents “arising” on premises

**B. ACCIDENTS WITHIN PERIOD OF EMPLOYMENT**

- § 11:21 Accidents before formal hiring
- § 11:22 Employees with fixed hours of employment
- § 11:23 Employees with no fixed time of employment
- § 11:24 Employees on call
- § 11:25 Injuries after quitting
- § 11:26 Accidents while collecting pay
- § 11:27 Returning for tools or clothes

**C. GOING AND COMING RULE AND RELATED DOCTRINES**

- § 11:28 General rule
- § 11:29 Premises exception
- § 11:30 “Zone of danger”
- § 11:31 Adjacent areas

## ALABAMA WORKERS' COMPENSATION

- § 11:32 Threshold doctrine
- § 11:33 Areas bisecting formal employment premises
- § 11:34 “Reasonable distance” limitation
- § 11:35 Journey itself part of service
- § 11:36 Special errand exception
- § 11:37 Payment for time of travel
- § 11:38 Payment of travel expenses
- § 11:39 Furnishing of transportation
- § 11:40 Limits on service exception
- § 11:41 Dual-purpose journeys—Meaning of “dual-purpose” journey
- § 11:42 Dual-purpose rule
- § 11:43 Deviations
- § 11:44 Meaning of “substantial deviation”
- § 11:45 Nondeviation cases
- § 11:46 Deviation cases
- § 11:47 Reasonable route rule
- § 11:48 Going and coming during meal breaks

### D. COURSE OF EMPLOYMENT: ACTIVITY

- § 11:49 General considerations
- § 11:50 General tests—Implied consent theory
- § 11:51 Indirect benefit theory
- § 11:52 Temporary deviation theory
- § 11:53 Respondeat superior test
- § 11:54 Personal comfort doctrine
- § 11:55 Personal comfort activities—Eating
- § 11:56 —Drinking
- § 11:57 —Smoking
- § 11:58 Relief from elements
- § 11:59 Seeking or using toilet facilities
- § 11:60 Preparatory acts
- § 11:61 Resting and sleeping
- § 11:62 Unusual or unreasonable methods
- § 11:63 Recreational and social activities—General tests
- § 11:64 Accidents on premises during work hours
- § 11:65 Company parties
- § 11:66 Going to and coming from recreational and social activities
- § 11:67 Horseplay
- § 11:68 The nonparticipating victim
- § 11:69 Participants and instigators
- § 11:70 “Aggressor defense”
- § 11:71 Implied consent theory
- § 11:72 Acts outside regular duties
- § 11:73 Acts benefitting coemployees
- § 11:74 Acts benefitting customers or strangers
- § 11:75 Acts benefitting employer personally

## TABLE OF CONTENTS

§ 11:76 Acts benefitting employee privately

§ 11:77 Acts in emergency

### **E. EXPRESS PROHIBITIONS LIMITATION COURSE OF EMPLOYMENT**

§ 11:78 In general

§ 11:79 Prohibitions limiting sphere of employment—Personal activities

§ 11:80 Personal comfort activities

§ 11:81 Doing of another person's job

§ 11:82 Prohibited place

§ 11:83 Prohibited time

§ 11:84 Prohibited conveyance

§ 11:85 Prohibited methods or tools

§ 11:86 Waiver

§ 11:87 Lack of enforcement

§ 11:88 Inconsistent orders

## **CHAPTER 12. AFFIRMATIVE DEFENSES**

### **I. GENERAL CONSIDERATIONS**

#### **A. GENERAL IRRELEVANCE OF EMPLOYEE FAULT**

§ 12:1 In general

§ 12:2 Added risk doctrine

§ 12:3 Negligence of dependents

#### **B. WILLFUL MISCONDUCT**

§ 12:4 In general

§ 12:5 Meaning of “willful” misconduct

§ 12:6 Burden of proof in willful conduct cases

§ 12:7 Willful violation of rules

§ 12:8 Type of rule

§ 12:9 Knowledge of rule

§ 12:10 Lack of enforcement of rule

§ 12:11 Breach of rule

§ 12:12 Causation

§ 12:13 Willful violation of statute

§ 12:14 Knowledge of law

§ 12:15 Lack of enforcement

§ 12:16 Violation of statute

§ 12:17 Excuses for violations

§ 12:18 Willful failure to use safety appliances

**C. INTOXICATION AND IMPAIRMENT BY  
ILLEGAL DRUGS**

- § 12:19 In general
- § 12:20 What is intoxication or impairment?
- § 12:21 General indicia of intoxication or impairment
- § 12:22 Scientific testing for intoxication
- § 12:23 Scientific testing for impairment
- § 12:24 Expert opinion as evidence of intoxication or impairment
- § 12:25 Causation standard—Sole cause standard
- § 12:26 Proximate cause standard

**D. SUICIDE OR INTENTIONAL SELF-INJURY**

- § 12:27 In general
- § 12:28 Suicide
- § 12:29 Self-injury other than suicide

**E. WILLFUL MISREPRESENTATIONS**

- § 12:30 Evolution of defense of willful misrepresentation
- § 12:31 Elements of defense—Willful misrepresentation
- § 12:32 Reliance
- § 12:33 Causal connection
- § 12:34 Written warning
- § 12:35 Employee misrepresentation as criminal violation

**F. ESTOPPEL**

- § 12:36 Judicial estoppel
- § 12:37 Equitable estoppel

**CHAPTER 13. MEANING OF DISABILITY**

**I. MEANING OF DISABILITY**

**A. GENERAL OVERVIEW OF DISABILITY  
REQUIREMENT**

- § 13:1 In general
- § 13:2 Distinguishing physical injury from disability
- § 13:3 General meanings of disability
- § 13:4 Classifications of disability

**B. TEMPORARY DISABILITY**

- § 13:5 Duration of temporary disability: Maximum medical improvement
- § 13:6 Determining the date of maximum medical improvement

## TABLE OF CONTENTS

- § 13:7 Posttrial maximum medical improvement
- § 13:8 Maximum duration of temporary disability
- § 13:9 Temporary total disability
- § 13:10 No requirement of total physical disability
- § 13:11 Wage loss
- § 13:12 Temporary partial disability
- § 13:13 Actual wage loss

### C. PERMANENT DISABILITY: EFFECT OF PHYSICAL INJURY

- § 13:14 In general
- § 13:15 Requirement of permanent physical disability
- § 13:16 Meaning of “permanent”
- § 13:17 Expert Evidence
- § 13:18 Determining degree of physical disability—Tests for physical disability
- § 13:19 Evidence of physical disability
- § 13:20 Physical disability as sufficient basis for award
- § 13:21 Loss of ability to perform employment
- § 13:22 Loss of preinjury ability as test
- § 13:23 Inability to perform trade
- § 13:24 Inability to perform past employment
- § 13:25 Inability to perform other employment
- § 13:26 Effect of reasonable accommodations

### D. PERMANENT DISABILITY: LOSS OF ABILITY TO SECURE EMPLOYMENT

- § 13:27 In general
- § 13:28 Inability to obtain employment due to employer prejudice—Discrimination against disabled workers
- § 13:29 Discrimination against older workers
- § 13:30 Inability to obtain employment due to intellectual or educational limitations
- § 13:31 Geographical limitations on the labor market
- § 13:32 Environmental limitations on employment
- § 13:33 Economic and other unemployment
- § 13:34 Refusal of suitable employment

### E. PERMANENT DISABILITY: THE EFFECT OF ACTUAL WAGE LOSS

- § 13:35 General test for measuring loss of earning capacity
- § 13:36 Effect of actual postinjury earnings
- § 13:37 Effect of lesser postinjury wages
- § 13:38 Effect of the same of higher postinjury earnings in general
- § 13:39 Effect of postinjury earnings under early Alabama law

## ALABAMA WORKERS' COMPENSATION

- § 13:40 Presumption of no lost earning capacity
- § 13:41 Factors strengthening the presumption
- § 13:42 Proving the same or higher wages
- § 13:43 Rebutting the presumption: unreliability of earnings
- § 13:44 Discounting changes in wage levels
- § 13:45 Discounting changes in claimant's age, training, and hours
- § 13:46 Discounting employer's sympathy
- § 13:47 Impermanence of postinjury earnings
- § 13:48 Expert testimony
- § 13:49 Rebutting the presumption: medical incapacity
- § 13:50 Postinjury earnings under the 1992 Alabama Workers' Compensation Act
- § 13:51 "Return to work" statute
- § 13:52 Meaning of "return to work"
- § 13:53 Requirement of same or higher wages
- § 13:54 Meaning of "physical impairment" and "vocational disability"
- § 13:55 Exception for scheduled injuries and permanent total disability cases
- § 13:56 Loss of employment
- § 13:57 Permanent total disability and wage loss—Inability to obtain and perform gainful employment
- § 13:58 Irregularity and unpredictability of wages
- § 13:59 Sheltered employment
- § 13:60 Employment without wages
- § 13:61 Effect of return to gainful employment

### F. DETERMINING THE EXTENT OF LOSS OF EARNING CAPACITY

- § 13:62 Nonscheduled permanent partial disability
- § 13:63 The problem of calculating the percentage of loss of earning capacity
- § 13:64 Requirement of direct testimony
- § 13:65 Effect of expert testimony
- § 13:66 Reasonable estimate of loss of earning capacity
- § 13:67 Permanent total disability—Definition of permanent total disability
- § 13:68 Applying case law definition

### G. DURATION OF LOSS OF EARNING CAPACITY

- § 13:69 Permanent disability period
- § 13:70 Maximum number of weeks of permanent disability
- § 13:71 Age as affecting duration of permanent disability

TABLE OF CONTENTS

**CHAPTER 14. SCHEDULE BENEFITS**

**I. GENERAL CONSIDERATIONS**

**A. NATURE OF SCHEDULE BENEFITS**

- § 14:1 Overview of schedule
- § 14:2 The origin and purpose of the schedule
- § 14:3 Basis of schedule benefits

**B. THE FEATURES OF THE SCHEDULE**

- § 14:4 Members included in the schedule
- § 14:5 Definitions of “loss”
- § 14:6 Definition of “loss of use”
- § 14:7 Extent of loss of use

**C. EXCLUSIVENESS OF SCHEDULE ALLOWANCE**

- § 14:8 In general
- § 14:9 Historical treatment of exclusivity of schedule
- § 14:10 The *Drummond* decision
- § 14:11 Meaning of “effects of the loss of the member”
- § 14:12 Meaning of “extend to other parts of the body”
- § 14:13 Meaning of “interfere with their efficiency”
- § 14:14 The pain exception

**D. DISFIGUREMENT**

- § 14:15 In general
- § 14:16 Scope of disfigurement statute
- § 14:17 Relationship between disfigurement and employability

**E. SCHEDULE PERMANENT TOTAL DISABILITY**

- § 14:18 In general

**CHAPTER 15. AVERAGE WEEKLY EARNINGS**

**I. GENERAL CONSIDERATIONS**

- § 15:1 Average weekly earnings

**A. WHAT IS INCLUDED IN EARNINGS**

- § 15:2 “EARNINGS” under the Alabama Workmen’s Compensation Act
- § 15:3 Cash payments by the employer

## ALABAMA WORKERS' COMPENSATION

- § 15:4 Tips
- § 15:5 Fringe benefits
- § 15:6 Vehicle, travel expenses, and the like
- § 15:7 Board and lodging, meals, merchandise, and services
- § 15:8 "EARNINGS" under the Alabama Workers' Compensation Act

### B. COMPUTING AVERAGE WEEKLY EARNINGS

- § 15:9 In general
- § 15:10 Which method should be applied
- § 15:11 Similarly situated employees
- § 15:12 Relevant time of earnings
- § 15:13 Earnings from other sources

### C. EVIDENCE OF AVERAGE WEEKLY EARNINGS

- § 15:14 In general

## CHAPTER 16. DISABILITY COMPENSATION

### I. CALCULATING DISABILITY COMPENSATION

#### A. IN GENERAL

- § 16:1 General considerations

#### B. BASIC COMPENSATION CALCULATION

- § 16:2 Statutory guidelines
- § 16:3 Partial disability benefits—Nonschedule partial disability benefits
- § 16:4 Schedule permanent partial disability
- § 16:5 Disfigurement
- § 16:6 Total disability benefits

#### C. MAXIMUM AND MINIMUM COMPENSATION

- § 16:7 In general
- § 16:8 The state's average weekly wage
- § 16:9 Applicability of maximum and minimum provisions
- § 16:10 Calculating maximum and minimum compensation
- § 16:11 Date of accident as controlling maximum and minimum benefits

#### D. SUCCESSIVE AND CONCURRENT DISABILITIES

- § 16:12 In general

## TABLE OF CONTENTS

§ 16:13	Concurrent disabilities
§ 16:14	Concurrent temporary disabilities
§ 16:15	Concurrent temporary and permanent disabilities— Concurrent temporary total and permanent partial disability
§ 16:16	Permanent partial disability following temporary total disability
§ 16:17	Concurrent temporary partial and permanent partial disabilities
§ 16:18	Concurrent temporary and permanent total disability
§ 16:19	Concurrent permanent disabilities
§ 16:20	Successive disabilities
§ 16:21	Overlapping disabilities
§ 16:22	Compensation when second injury results in temporary disability only
§ 16:23	Second injury resulting in permanent disability
§ 16:24	Overlapping disabilities from different employments
§ 16:25	Apportionment of benefits for successive disabilities—General apportionment statute
§ 16:26	Specific apportionment statute
§ 16:27	Special hernia statute

### E. ADJUSTMENT TO COMPENSATION AWARDS

§ 16:28	Increased compensation for dependents
§ 16:29	Cost-of-living adjustments

### F. CREDITS AND OFFSETS

§ 16:30	Advance payments of compensation
§ 16:31	Advance payments when no liability found
§ 16:32	Postinjury earnings as credit against award
§ 16:33	Sick pay
§ 16:34	Retirement benefits
§ 16:35	Backpay
§ 16:36	Social Security benefits
§ 16:37	Unemployment benefits

### G. PAYMENT OF BENEFITS

§ 16:38	Schedule of payment
§ 16:39	The waiting period
§ 16:40	Lump-sum payments
§ 16:41	Failure to pay
§ 16:42	Recipient of compensation
§ 16:43	Suspension or termination of benefits—Employee's failure to mitigate disability
§ 16:44	Refusal of reasonable medical treatment

## ALABAMA WORKERS' COMPENSATION

- § 16:45 Refusal of suitable work
- § 16:46 Refusal of vocational rehabilitation
- § 16:47 Assessing loss of benefits
- § 16:48 Employee's failure to furnish affidavit of new employment
- § 16:49 Incarceration or commitment of claimant
- § 16:50 Employer's duty to report suspension or termination of benefits
- § 16:51 Termination of benefits

### H. HERITABILITY AND ASSIGNABILITY OF BENEFITS

- § 16:52 Heritability of benefits
- § 16:53 Identity of claimant
- § 16:54 Accrued but unpaid installments
- § 16:55 Unaccrued payments
- § 16:56 Type of disability involved
- § 16:57 Maximum benefits
- § 16:58 Assignability of claims
- § 16:59 Claims by group benefit plans
- § 16:60 Counterclaims
- § 16:61 Liens for alimony or child support
- § 16:62 Criminal fines
- § 16:63 Waiver of exemption
- § 16:64 Penalty for accepting assignment of compensation claim

## Volume 2

### CHAPTER 17. MEDICAL BENEFITS AND VOCATIONAL REHABILITATION

#### I. MEDICAL BENEFITS

##### A. THE RIGHT TO MEDICAL BENEFITS

- § 17:1 In general
- § 17:2 Coverage for work-related injuries
- § 17:3 Notice
- § 17:4 Authorization
- § 17:5 Reasonable necessity
- § 17:6 No requirement of disability
- § 17:7 Statute of limitations
- § 17:8 Effect of affirmative defenses to compensation

##### B. LIMITATIONS ON MEDICAL BENEFITS

- § 17:9 Duration of medical benefits

## TABLE OF CONTENTS

- § 17:10 Amount of medical benefits—Reasonable amount
- § 17:11 —Prevailing rates and schedule of fees
- § 17:12 Settlement agreements

### C. AUTHORIZATION OF MEDICAL TREATMENT

- § 17:13 In general
- § 17:14 Historical treatment of selection process
- § 17:15 Employer selection
- § 17:16 Failure or refusal to select physician
- § 17:17 Referrals
- § 17:18 Duration of authorization
- § 17:19 Scope of authorization
- § 17:20 Utilization review and precertification
- § 17:21 Employee selection and the panel of four
- § 17:22 Effect of lack of authorization on disability issues
- § 17:23 Communication with physicians
- § 17:24 Dispute resolution

### D. WHAT MEDICAL EXPENSES ARE COVERED

- § 17:25 In general
- § 17:26 Medical services, supplies, and apparatus
- § 17:27 Artificial members
- § 17:28 Transportation costs
- § 17:29 Services of nonmedical providers
- § 17:30 Autopsies

### E. PAYMENT OF MEDICAL BILLS

- § 17:31 In general
- § 17:32 Payment of undisputed medical expenses
- § 17:33 Procedure for seeking payment of disputed bills
- § 17:34 Employee liability for medical expenses
- § 17:35 Payment of medical bills by collateral sources as defense to liability
- § 17:36 Collateral source's right to intervene
- § 17:37 Limits on collateral source's right to reimbursement
- § 17:38 Medical providers right of action

## II. VOCATIONAL REHABILITATION BENEFITS

- § 17:39 In general
- § 17:40 Eligibility for vocational rehabilitation
- § 17:41 The vocational rehabilitation plan
- § 17:42 Covered vocational rehabilitation costs
- § 17:43 Concurrent payment of compensation and vocational rehabilitation expenses
- § 17:44 Employee's refusal to submit to vocational rehabilitation

§ 17:45 Disputes over vocational rehabilitation

## **CHAPTER 18. DEPENDENCY AND DEATH BENEFITS**

### **I. NATURE OF DEATH BENEFITS**

#### **A. PURPOSE OF DEATH BENEFITS**

§ 18:1 Death benefits as support

#### **B. DISTINGUISHING DEATH BENEFITS FROM DISABILITY BENEFITS**

§ 18:2 Difference in rights of action

§ 18:3 Effect of prior adjudication of workers' compensation claim

§ 18:4 Effect of prior settlement of workers' compensation claim

§ 18:5 Death following payment of disability compensation

### **II. DEPENDENT STATUS**

#### **A. GENERAL CONSIDERATIONS**

§ 18:6 General meaning of "dependents"

#### **B. TYPES OF DEPENDENTS**

§ 18:7 Spouses

§ 18:8 Parents

§ 18:9 Children

§ 18:10 Orphans

§ 18:11 Other members of the family

§ 18:12 Personal representatives and guardians

§ 18:13 Alien dependents

### **III. DEPENDENCY**

§ 18:14 In general

§ 18:15 Conclusive presumption of total dependency

§ 18:16 Spouses not entitled to conclusive presumption of total dependency

§ 18:17 Actual dependency

### **IV. CALCULATING DEATH BENEFITS**

§ 18:18 The basic amount of death benefits

§ 18:19 Total dependents

§ 18:20 Partial dependents

§ 18:21 Maximum and minimum provisions

§ 18:22 Priorities and sharing among multiple dependents

## TABLE OF CONTENTS

- § 18:23 Priorities among multiple total dependents
- § 18:24 Priorities among total dependents and partial dependents
- § 18:25 Priorities among partial dependents
- § 18:26 Sharing among class members
- § 18:27 Employees without dependents
- § 18:28 Burial benefits

## V. CHANGE IN DEPENDENCY STATUS

- § 18:29 In general
- § 18:30 Occurrences which trigger termination of benefits
- § 18:31 Effect of termination on other dependents
- § 18:32 Reopening death cases for reapportionment of benefits

## CHAPTER 19. EFFECT OF EXCLUSIVITY PROVISIONS

### I. THE BASIC EXCLUSIVE-REMEDY RULE

- § 19:1 Workers' compensation as exclusive remedy
- § 19:2 Theory of exclusivity
- § 19:3 Constitutionality of exclusivity provisions
- § 19:4 Exclusivity as defense to civil action

### II. EMPLOYER IMMUNITY FROM CIVIL ACTIONS

#### A. EMPLOYERS IMMUNE AND SUSCEPTIBLE TO CIVIL ACTIONS

- § 19:5 Employer immunity provision
- § 19:6 Who is an "employer" for immunity purposes
- § 19:7 Procedure for determining "employer" status
- § 19:8 Immunity of uncovered and uninsured employers

#### B. ELECTION OF REMEDIES

- § 19:9 General rule
- § 19:10 Noncovered employees
- § 19:11 Election without full knowledge
- § 19:12 Acceptance of medical benefits

### III. ACTIONS AND REMEDIES EXCLUDED

- § 19:13 Kinds of action barred
- § 19:14 Common-law actions
- § 19:15 Statutory laws—Employers' Liability Acts
- § 19:16 Wrongful death actions
- § 19:17 Safety laws
- § 19:18 Product liability actions

§ 19:19 Contract actions

#### **IV. IMMUNITY OF PARTIES OTHER THAN THE EMPLOYER**

##### **A. GENERAL CONSIDERATIONS**

§ 19:20 Overview of immunity of parties other than the employer

##### **B. THE COEMPLOYEE SAGA**

§ 19:21 Coemployees—The history of coemployee immunity—  
Coemployee as party other than the employer

§ 19:22 Complete coemployee immunity

§ 19:23 Unconstitutionality of coemployee immunity for work-related  
injuries

§ 19:24 Constitutionality of coemployee immunity for wrongful death  
actions

§ 19:25 Coemployee liability for work-related injuries

§ 19:26 Legislative reaction to *Grantham v. Denke*

§ 19:27 Constitutionality of coemployees' limited immunity

§ 19:28 Nonseverability provision of Act 85-41

§ 19:29 Limited coemployee immunity under the Alabama Workers'  
Compensation Act—Coemployees' limited immunity for  
work-related injuries

§ 19:30 Coemployees' limited immunity for occupational diseases

§ 19:31 Coemployees' limited immunity for work-related deaths

##### **C. WORKERS' COMPENSATION CARRIERS**

§ 19:32 Workers' compensation carriers—Workers' compensation  
carriers' liability for negligent inspection under Alabama  
common law

§ 19:33 Carrier immunity under original Act

§ 19:34 Workers' compensation carriers' immunity from civil actions  
based on compensable injuries

§ 19:35 Unconstitutionality of workers' compensation carrier  
immunity for work-related injuries

§ 19:36 Workers' compensation carrier's limited immunity under  
Alabama Workers' Compensation Act

§ 19:37 Constitutionality of limited immunity of workers'  
compensation carrier

§ 19:38 Service companies for self-insured employers

##### **D. OTHER PARTIES WITH LIMITED IMMUNITY**

§ 19:39 Labor unions

§ 19:40 Governmental safety agencies

§ 19:41 Companies making safety inspections

## TABLE OF CONTENTS

### **V. EFFECT OF EXCLUSIVITY PROVISIONS ON PERSONS OTHER THAN THE EMPLOYEE**

- § 19:42 In general
- § 19:43 Actions by spouses and other dependents
- § 19:44 Actions by personal representatives and nondependent family members
- § 19:45 Independent injury to spouse or other dependent

### **VI. THIRD PARTY ACTIONS OVER AGAINST EMPLOYER**

- § 19:46 Effect of compensation policy considerations
- § 19:47 Third party actions for contribution
- § 19:48 Third party actions for express indemnity
- § 19:49 Third party actions for implied contract of indemnity—  
Contract of indemnity implied from relationship
- § 19:50 Implied indemnity among joint tortfeasors
- § 19:51 Third party actions for breach of contract to procure insurance

## **CHAPTER 20. SCOPE OF EXCLUSIVITY PROVISIONS**

### **I. COVERAGE AS BASIS FOR EXCLUSIVITY**

#### **A. COVERED INJURIES AND DEATHS**

- § 20:1 Statutory scope of exclusivity
- § 20:2 Immunity when claimant foregoes compensation
- § 20:3 Coverage, not compensability, as basis of exclusivity—The case of the death of a dependentless employee

#### **B. NONCOVERED INJURIES AND DEATHS**

- § 20:4 Inapplicability of exclusivity provisions for noncovered injuries and deaths

### **II. CATEGORIZING INJURIES AND DEATHS FOR EXCLUSIVITY PURPOSES**

#### **A. NONCOVERED PHYSICAL INJURIES**

- § 20:5 Gradual injuries and occupational diseases
- § 20:6 Personal injuries occurring outside the course of the employment
- § 20:7 Intentional assaults committed by employer
- § 20:8 Intentional assaults by supervisory employees
- § 20:9 Assaults that do not arise out of the employment

## **B. NONPHYSICAL INJURIES**

- § 20:10 Purely psychological injuries
- § 20:11 Nonphysical injuries accompanying compensable physical injuries
- § 20:12 Misrepresentation
- § 20:13 Bad faith
- § 20:14 Outrageous conduct
- § 20:15 Invasion of privacy
- § 20:16 Civil conspiracy
- § 20:17 Other nonphysical injury torts
- § 20:18 Spoliation of evidence
- § 20:19 Property damage

## **III. RETALIATORY DISCHARGE ACTIONS**

- § 20:20 The emergence of the retaliatory discharge statute
- § 20:21 Acts triggering coverage
- § 20:22 Conduct prohibited—"Termination"
- § 20:23 Burden of proof of retaliatory discharge
- § 20:24 Proving the prima facie case of retaliatory discharge
- § 20:25 Legitimate reasons for discharge
- § 20:26 Termination for employee deficiencies
- § 20:27 Termination for excessive absenteeism
- § 20:28 Termination due to inability to perform work
- § 20:29 Termination for employee misconduct
- § 20:30 Termination for economic reasons
- § 20:31 Rebuttal evidence
- § 20:32 Estoppel
- § 20:33 Retaliatory discharge action as tort action
- § 20:34 Parties to retaliatory discharge actions
- § 20:35 Whether retaliatory discharge action arises under the workers' compensation laws
- § 20:36 Procedural differences between retaliatory discharge action and claim for workers' compensation
- § 20:37 Effect of collective bargaining agreement on retaliatory discharge actions

## **CHAPTER 21. THIRD PARTY ACTIONS**

### **I. OVERVIEW OF THIRD-PARTY ACTIONS**

- § 21:1 Statutory basis for third party actions
- § 21:2 Theoretical bases for third party actions

### **II. PROPER PARTIES PLAINTIFF TO THIRD PARTY CIVIL ACTIONS**

- § 21:3 Employees

## TABLE OF CONTENTS

§ 21:4	Dependents and personal representatives
§ 21:5	Nondependent parent
§ 21:6	Personal representative of estate of dependent
§ 21:7	Employer and workers' compensation carrier
§ 21:8	Conflict of interest of the carrier
§ 21:9	Compulsory joinder of employer or insurer
§ 21:10	Procedure regarding capacity to sue

### III. WHO MAY BE SUED AS A THIRD PARTY

§ 21:11	In general
§ 21:12	Employer as third party: the dual capacity doctrine
§ 21:13	Employer as third party—"the dual persona" doctrine and affiliated corporations
§ 21:14	Other employers covered by the Workers' Compensation Act
§ 21:15	Coemployees—Historical treatment of coemployees as third party
§ 21:16	—Employees of the same employer
§ 21:17	Coemployees—Officers and directors
§ 21:18	Coemployees—Agents
§ 21:19	Workers' compensation insurance carriers
§ 21:20	Labor unions and safety inspectors
§ 21:21	Governmental agencies
§ 21:22	Physicians
§ 21:23	Alabama Insurance Guaranty Association

### IV. WILLFUL CONDUCT ACTIONS

§ 21:24	In general
§ 21:25	Statutory definitions of "willful conduct"
§ 21:26	Willful and intentional conduct
§ 21:27	Willful and intentional removal of a safety device
§ 21:28	"Safety guard or safety device"
§ 21:29	"Provided by the manufacturer"
§ 21:30	"Machine"
§ 21:31	"Removal"
§ 21:32	"Willful and intentional" removal
§ 21:33	Causation
§ 21:34	Statutory defense
§ 21:35	Intoxication
§ 21:36	Willful and intentional violation of safety rule

### V. ELECTION

§ 21:37	Election under original act
§ 21:38	Election under current act
§ 21:39	Necessity of employer's consent to employee's settlement

## **VI. DISTRIBUTION OF PROCEEDS**

### **A. OVERVIEW OF THIRD PARTY CREDIT STATUTE**

- § 21:40 The third party credit statute
- § 21:41 Statutory nature of credit
- § 21:42 Waiver of statutory right

### **B. THIRD PARTY CREDITOR STATUS**

- § 21:43 Employer as third party creditor
- § 21:44 Workers' compensation carrier as third party creditor
- § 21:45 Effect of lack of liability

### **C. PAYMENTS SUBJECT TO CREDIT**

- § 21:46 "Compensation"
- § 21:47 Medical benefits
- § 21:48 Vocational benefits
- § 21:49 Burial expenses
- § 21:50 Collection of third party proceeds as triggering right to credit
- § 21:51 Collection by personal representatives
- § 21:52 Collection by nondependent parents
- § 21:53 Collection by spouse
- § 21:54 Settlement proceeds
- § 21:55 Private insurance benefits
- § 21:56 Uninsured motorist benefits
- § 21:57 Noneconomic damages
- § 21:58 "Net" damages

### **D. EMPLOYER'S RIGHT TO NOTICE AND CONSENT TO THIRD PARTY RECOVERY**

- § 21:59 No statutory right to notice or consent
- § 21:60 Express agreements
- § 21:61 Third party's duties to employer or insurer

### **E. DISTRIBUTING THE PROCEEDS OF THIRD PARTY RECOVERY**

- § 21:62 Reimbursement of compensation paid
- § 21:63 Credit on future liability
- § 21:64 Extinguishing liability for future compensation
- § 21:65 Excess third party damages
- § 21:66 Attorney's fees
- § 21:67 Effect of additional representation
- § 21:68 Statute of limitations on contribution claims
- § 21:69 Expenses

## TABLE OF CONTENTS

§ 21:70 Attorney's fees when employer brings third party action

## VII. THIRD PARTY'S DEFENSES

§ 21:71 Third party action as employee's cause of action

§ 21:72 Contributory negligence

§ 21:73 Statute of limitations

§ 21:74 Collateral source rule

§ 21:75 Settlement and release

## CHAPTER 22. NOTICE

### I. THE NOTICE REQUIREMENT

§ 22:1 Summary of notice section

§ 22:2 Purpose and construction of notice section

§ 22:3 Applicability of notice section

§ 22:4 Inapplicability of other notice laws

### II. TYPES OF NOTICE

#### A. WRITTEN NOTICE

§ 22:5 Substantial compliance rule

§ 22:6 Petition for benefits as written notice

§ 22:7 Actual knowledge as substitute for written notice

§ 22:8 Sufficiency of actual knowledge—As question of fact or law

§ 22:9 —Purpose of notice as test for sufficiency

§ 22:10 —Requirement of knowledge of work connection

§ 22:11 —Nature of injury

§ 22:12 Whose knowledge imputed to employer—Agents for receiving notice

§ 22:13 —Supervisory personnel

§ 22:14 —Workers' compensation carriers

§ 22:15 —Coemployers

§ 22:16 —Joint employers

§ 22:17 Basis of actual knowledge—Observation of the accident

§ 22:18 —Information from third parties

#### B. ORAL NOTICE

§ 22:19 Oral notice

### III. TIMELINESS OF NOTICE

#### A. THE STATUTORY DEADLINES

§ 22:20 The Five-day and 90-day requirements

§ 22:21 Commencement dates

§ 22:22 Timeliness of actual knowledge

**B. EXCUSES FOR LATE NOTICE**

- § 22:23 Physical incapacity
- § 22:24 Mental incapacity
- § 22:25 Fraud or deceit
- § 22:26 "Equal good reason"

**IV. WAIVER OF NOTICE REQUIREMENT**

- § 22:27 Payment of benefits as waiver
- § 22:28 Procedural waiver

**V. NOTICE IN DEATH CASES**

- § 22:29 Commencement date

**VI. NOTICE PRACTICE AND PROCEDURE**

- § 22:30 Pleading—Petition
- § 22:31 —Answer
- § 22:32 Burden of proof
- § 22:33 Findings of fact

**CHAPTER 23. STATUTE OF LIMITATIONS**

**I. GENERAL OVERVIEW OF STATUTE OF LIMITATIONS**

- § 23:1 Summary of statute of limitations
- § 23:2 Nature of statute of limitations
- § 23:3 Statute of limitations as affirmative defense subject to waiver

**II. STATUTORY PERIODS**

**A. LENGTH OF STATUTORY PERIOD**

- § 23:4 Personal injuries
- § 23:5 Occupational diseases
- § 23:6 Purpose of two-year rule

**B. DATES COMMENCING STATUTORY PERIOD**

- § 23:7 Date of accident
- § 23:8 Determining date of accident
- § 23:9 "ACCIDENT" as limitation on latent and gradual injury claims
- § 23:10 Date of injury—Occupational diseases
- § 23:11 Cumulative-stress injuries—Alabama Workmen's Compensation Act
- § 23:12 Latent injuries

## TABLE OF CONTENTS

- § 23:13 Date of death
- § 23:14 Date of termination

### C. SPECIAL NONCLAIMS STATUTES

- § 23:15 In general
- § 23:16 Nonclaims statute in death cases—Applicability of nonclaims statute
- § 23:17 —Effect on nonclaims statute
- § 23:18 —Constitutionality
- § 23:19 Occupational pneumoconiosis and exposure to radiation nonclaims statute

## III. TOLLING PROVISIONS

### A. FILING OF PETITION

- § 23:20 Statutory rule that filing of petition tolls statute
- § 23:21 Necessity that petition be filed within statutory period
- § 23:22 Effect of filing of petition by dependents in death cases
- § 23:23 Amended petitions and the relation back doctrine

### B. TOLLING BY AGREEMENT

- § 23:24 Agreement as to compensation payable
- § 23:25 Effect of agreement on nonparties
- § 23:26 Agreement to extend or shorten statutory period

### C. TOLLING BY VOLUNTARY PAYMENTS OF COMPENSATION

- § 23:27 General rule that payments of compensation toll statutory period
- § 23:28 Reason that voluntary payments of compensation toll statute
- § 23:29 Burden of proving payment of compensation
- § 23:30 What constitutes “payment” of compensation
- § 23:31 What constitutes “compensation”—Statutory definition of “compensation”
- § 23:32 —Payment of wages
- § 23:33 —Sick pay
- § 23:34 —Medical benefits
- § 23:35 —Third party damages
- § 23:36 Payments of compensation for different injury
- § 23:37 Payment of compensation after statute has expired
- § 23:38 Payment of compensation as tolling death claims—Tolling statute of limitations
- § 23:39 —Tolling nonclaims statute

### D. TOLLING OF STATUTE DUE TO DISABILITY

- § 23:40 Physical or mental incapacity tolls statute

## ALABAMA WORKERS' COMPENSATION

- § 23:41 Meaning of physical incapacity
- § 23:42 Meaning of mental incapacity
- § 23:43 Minority does not toll statute

### E. TOLLING DUE TO EMPLOYER MISREPRESENTATIONS

- § 23:44 Employer fraud as act tolling statute of limitations
- § 23:45 Innocent or negligent misrepresentations as act tolling statute
- § 23:46 Who is a representative of the employer
- § 23:47 Reliance
- § 23:48 Admission of liability
- § 23:49 Denial of liability
- § 23:50 Concealment of facts of liability
- § 23:51 Discovery rule
- § 23:52 Effect of legal representation

### F. TOLLING DUE TO MISTAKE

- § 23:53 General rule that mistake of law is no excuse
- § 23:54 Mistake in cause of action as excuse for late claim

## IV. APPORTIONMENT

- § 23:55 Rule against apportionment

## CHAPTER 24. PROCEDURAL LAW

### I. OVERVIEW OF WORKERS' COMPENSATION PROCEDURE

#### A. LIBERALITY OF PROCEDURE

- § 24:1 Liberal nature of compensation procedure
- § 24:2 Applicability of Alabama Rules of Civil Procedure

#### B. ADMINISTRATIVE FORUMS

- § 24:3 Judicial administration of disputes
- § 24:4 Arbitration
- § 24:5 Alternative dispute resolution—The Ombudsman Program
- § 24:6 —Mediation

### II. PLEADINGS

- § 24:7 General rules of pleading
- § 24:8 Complaints—Required averments
- § 24:9 Complaints—Requirement of controversy

## TABLE OF CONTENTS

- § 24:10 —Filing of complaint and service
- § 24:11 Answer
- § 24:12 Other pleadings
- § 24:13 Amendments
- § 24:14 Variance between pleadings and proof

## III. PARTIES

- § 24:15 Parties plaintiff—Employees and dependents as proper parties
- § 24:16 Guardians and next friends
- § 24:17 Personal representatives and nondependents
- § 24:18 Alien dependents
- § 24:19 Right to amend complaint brought by improper party
- § 24:20 Interpleader
- § 24:21 Employer as proper plaintiff
- § 24:22 Parties defendant—Employer as proper party defendant
- § 24:23 Fictitious parties
- § 24:24 Direct actions against insurers—Statutory authority
- § 24:25 Specific policy provisions
- § 24:26 Effect of compliance with direct action section
- § 24:27 Effect of compliance with specific policy provision
- § 24:28 Shareholders
- § 24:29 Intervention and joinder

## IV. DISCOVERY

- § 24:30 Applicability of rules of civil procedure
- § 24:31 Statutory limitations on discovery process
- § 24:32 Statutory right to medical examinations
- § 24:33 Statutory right to medical records
- § 24:34 Right to vocational examination
- § 24:35 Right to discover surveillance information

## V. CONDUCT OF TRIALS

- § 24:36 No trial by jury
- § 24:37 Trial by jury in willful conduct cases
- § 24:38 Time of trial—Preferential treatment of compensation cases
- § 24:39 —Continuances
- § 24:40 Summary manner of proceedings
- § 24:41 Bifurcation

## VI. JUDGMENTS

- § 24:42 Default judgments and judgments on the pleadings
- § 24:43 Summary judgments
- § 24:44 Judgments on final findings

## ALABAMA WORKERS' COMPENSATION

- § 24:45 Findings of fact and conclusions of law
- § 24:46 Postjudgment practice
- § 24:47 Recording of judgments
- § 24:48 Satisfaction of judgments

### **VII. RES JUDICATA**

- § 24:49 Effect of judgments
- § 24:50 Res judicata applies to compensation decisions
- § 24:51 Prior compensation decision as binding in later compensation proceedings
- § 24:52 Compensation claim followed by personal injury suit
- § 24:53 Necessity for identity or privity of parties
- § 24:54 Necessity for identity of issues

## **CHAPTER 25. EVIDENCE**

### **I. BURDEN OF PROOF**

- § 25:1 Burden of proof on claimant
- § 25:2 Measure of proof
- § 25:3 Burden of proof on employer
- § 25:4 Stipulations
- § 25:5 Judicial notice

### **II. ADMISSIBILITY OF EVIDENCE**

#### **A. GENERAL CONSIDERATIONS**

- § 25:6 Extrinsic evidence
- § 25:7 Applicability of rules of evidence

#### **B. RELEVANCY**

- § 25:8 Materiality
- § 25:9 Records from other proceedings
- § 25:10 Prior injuries or claims
- § 25:11 Procurement of insurance
- § 25:12 Payment of compensation

#### **C. HEARSAY**

- § 25:13 Hearsay evidence
- § 25:14 Res gestae exception
- § 25:15 Statements to doctors for purposes of treatment
- § 25:16 Medical and hospital records
- § 25:17 Public records
- § 25:18 Hearsay as basis for expert testimony
- § 25:19 Deposition of disabled employee

## TABLE OF CONTENTS

### D. ADMISSIONS

- § 25:20 Admissions of the parties
- § 25:21 Admissions in accident reports
- § 25:22 Authorized admissions by representatives
- § 25:23 Judicial admissions
- § 25:24 Employee's statements in connection with application for disability benefits
- § 25:25 Employee's statement as to causation

### E. PRIVILEGES

- § 25:26 Psychotherapist-patient privilege
- § 25:27 Counselor-client privilege
- § 25:28 Workers' compensation privilege

### F. OTHER TYPES OF EVIDENCE

- § 25:29 Statements of deceased persons
- § 25:30 Surveillance evidence

## III. EFFECT OF ERRORS IN EVIDENTIARY RULINGS

- § 25:31 Effect of admission of incompetent evidence
- § 25:32 Undue influence of illegal evidence
- § 25:33 Reversible error when incompetent evidence is sole basis for finding of fact
- § 25:34 Effect of failure to properly object
- § 25:35 Effect of exclusion of competent evidence

## IV. EVIDENCE IN WILLFUL MISCONDUCT TRIALS

- § 25:36 In general

## CHAPTER 26. REVIEW OF WORKERS' COMPENSATION JUDGMENTS

### I. NATURE OF REVIEW

- § 26:1 "Appeal by certiorari"
- § 26:2 Procedural inroads into the certiorari process
- § 26:3 Review by appeal
- § 26:4 Review by certiorari

### II. RIGHT TO REVIEW BY APPEAL

- § 26:5 Finality requirement
- § 26:6 Timeliness requirement

§ 26:7 Waiver of right of appeal

### **III. SCOPE OF REVIEW**

§ 26:8 Certiorari review

§ 26:9 Appellate review

§ 26:10 Informal introduction of evidence into the record

§ 26:11 Effect of failure of appellant to transmit record

### **IV. STANDARD OF REVIEW**

§ 26:12 Questions of law

§ 26:13 Findings of fact

§ 26:14 Finding contrary to the undisputed evidence

§ 26:15 Finding based on possibilities

§ 26:16 Findings based on circumstantial evidence

### **V. STAYS**

§ 26:17 Stay of payments pending appeal

## **CHAPTER 27. REOPENING COMPENSATION AWARDS**

### **I. RIGHT TO REOPEN JUDGMENT**

§ 27:1 Finality of workers' compensation judgments

§ 27:2 Statutory right to reopen cases

§ 27:3 Exclusivity of statutory rights

### **II. REOPENING FOR WORSENING OF CONDITION**

§ 27:4 The return-to-work statute

§ 27:5 Absence of other statutory remedies

§ 27:6 Constitutionality of limited right to reopen cases

§ 27:7 Reservation of continuing jurisdiction

§ 27:8 Procedural right to reopen cases

§ 27:9 Procedure for reopening judgment

§ 27:10 Revision by procedural rules

### **III. REOPENING PERMANENT TOTAL DISABILITY CASES DUE TO CHANGE IN CONDITION**

§ 27:11 Statutory right

§ 27:12 Procedure for reopening permanent total disability cases—  
Requirement of petition

§ 27:13 —Pretrial procedure

§ 27:14 Burden of proof on employer

§ 27:15 Successive petitions

## TABLE OF CONTENTS

§ 27:16 Reinstatement of permanent total disability payments

### **IV. REOPENING JUDGMENTS FOR OTHER REASONS**

§ 27:17 Reopening judgments due to fraud

§ 27:18 Reopening judgment based on newly discovered evidence

§ 27:19 Reopening cases based on other procedural grounds

### **V. FUTURE MEDICAL EXPENSES**

§ 27:20 In general

## **CHAPTER 28. SETTLEMENT OF COMPENSATION CLAIMS**

### **I. SETTLEMENT RIGHT**

§ 28:1 Compensation policy favoring settlement

§ 28:2 Compensation policy favoring full payment of benefits

§ 28:3 Preinjury waiver void as against public policy

§ 28:4 Settlements for equal or greater benefits

§ 28:5 Settlements for less benefits

§ 28:6 Summary of right to settlement

### **II. APPROVAL OF SETTLEMENTS**

§ 28:7 Procedure for approval

§ 28:8 Effect of lack of approval

§ 28:9 Settlement funds as advance payments of compensation

§ 28:10 Effect of approval

### **III. WHAT SETTLEMENT INCLUDES**

§ 28:11 Language of settlement as controlling

§ 28:12 Broad scope of general release

§ 28:13 Limited scope of release

§ 28:14 Release of future medical benefits

§ 28:15 Settling future medical benefits involving Medicare recipients

§ 28:16 Release of vocational rehabilitation benefits

### **IV. REOPENING SETTLEMENTS**

§ 28:17 Vacating settlement due to fraud—Grounds for vacating settlements due to fraud

§ 28:18 Fraudulent acts justifying vacating settlement

§ 28:19 Time limits for reopening fraud

§ 28:20 Coercion and undue influence

§ 28:21 Time limits for reopening settlements based upon coercion or undue influence

## ALABAMA WORKERS' COMPENSATION

- § 28:22 Reopening settlements for change of conditions
- § 28:23 Vacating settlement under rules of civil procedure
- § 28:24 Mutual mistake
- § 28:25 Mistake of law
- § 28:26 Incompetence
- § 28:27 Effect of lack of legal representation
- § 28:28 Procedure for vacating court-approved settlement

### V. SETTLEMENTS MEDIATED BY OMBUDSMEN

- § 28:29 Special settlement statute
- § 28:30 Vacating ombudsman settlement

## CHAPTER 29. FEES, COSTS AND INTEREST

### I. ATTORNEY'S FEES

- § 29:1 Codification of American Rule
- § 29:2 Problem with American Rule in compensation context
- § 29:3 Statutory limitations on attorney's fees
- § 29:4 Judicial approval of attorneys
- § 29:5 Judicial supervision of amount of fees
- § 29:6 No fee absent an award
- § 29:7 Maximum amount of fee
- § 29:8 Trial court's discretion to award lesser fees
- § 29:9 Effect of credits on fee
- § 29:10 Standing to contest fees
- § 29:11 Effect of subsequent events on fees
- § 29:12 Lump-summing of fees
- § 29:13 Calculating attorney's fees in permanent total disability cases
- § 29:14 Attorney's fees on recovery of medical expenses
- § 29:15 Expenses
- § 29:16 Attorney's fees at appellate levels
- § 29:17 Guardian fees

### II. COSTS

- § 29:18 Statutory authority to award costs
- § 29:19 Offers of judgment
- § 29:20 What are "costs"
- § 29:21 Costs on appeal

### III. INTEREST

- § 29:22 Prejudgment interest
- § 29:23 Postjudgment interest

TABLE OF CONTENTS

**CHAPTER 30. CONFLICTS OF LAWS**

**I. INTRASTATE CONFLICTS**

- § 30:1 Conflicting versions of Act
- § 30:2 Changes in case law
- § 30:3 Effective dates of acts

**II. CONFLICTS BETWEEN STATE AND FEDERAL  
COMPENSATION LAW**

**A. CONFLICTS BETWEEN ACT AND LHWCA**

- § 30:4 Early rule: maritime preeminence
- § 30:5 The Longshoremen's and Harbor Workers' Act—Original two-part coverage formula
- § 30:6 The "twilight zone" rule
- § 30:7 The 1972 amendments to the Longshore Act
- § 30:8 Concurrent jurisdiction

**B. CONFLICTS BETWEEN ACT AND JONES ACT**

- § 30:9 In general
- § 30:10 Who is a seaman?
- § 30:11 What is a "vessel"?
- § 30:12 What is a "permanent" assignment
- § 30:13 What is seaman "capacity"?
- § 30:14 Effect of receipt of workers' compensation benefits on seaman status
- § 30:15 Seamen injured on land
- § 30:16 Effect of receipt of workers' compensation benefits on Jones Act claim

**C. CONFLICTS BETWEEN ACT AND FELA**

- § 30:17 Federal power over interstate commerce
- § 30:18 Early scope of FELA coverage
- § 30:19 State exemption for workers in interstate commerce
- § 30:20 Expansion of the scope of FELA
- § 30:21 Interstate commerce exemption after FELA expansion—Continued vitality of exemption
- § 30:22 Repeal of exemption

**D. CONFLICT BETWEEN ACT AND FECA**

- § 30:23 In general

**III. INTERSTATE CONFLICTS**

- § 30:24 Power of Alabama court to enforce compensation law of other

## ALABAMA WORKERS' COMPENSATION

- states—Compensation law of other states with special commissions
- § 30:25 —Compensation law of other states administered by courts
- § 30:26 Successive awards—Constitutionality of dual jurisdiction
- § 30:27 —Prior award as no bar to compensation
- § 30:28 —Timeliness of claim
- § 30:29 —Prevention of double recovery
- § 30:30 —Effect of previous denial of compensation
- § 30:31 —Exclusiveness of Alabama award
- § 30:32 Applicability of Act to in-state injuries—General rule covering in-state injuries
- § 30:33 —In-state injuries to foreign employees
- § 30:34 —Choice-of-law provisions
- § 30:35 Applicability of Act to out-of-state injuries
- § 30:36 —Meaning or “principally localized”
- § 30:37 —Place of employment contract
- § 30:38 Conflicts involving damages suits

### IV. CONFLICTS BETWEEN ACT AND ADA

- § 30:39 In general

## CHAPTER 31. SECURITY FOR COMPENSATION

### I. SECURITY REQUIREMENT

- § 31:1 Basic purpose of security
- § 31:2 Methods of assuring compliance—Double penalty
- § 31:3 —Other civil penalties
- § 31:4 —Criminal fines
- § 31:5 —Civil actions

### II. METHODS OF SECURING LIABILITY

- § 31:6 Private insurance
- § 31:7 Self-insurance
- § 31:8 Hybrid security

### III. PROTECTION FROM LOSS OF COVERAGE

#### A. LOSS OF COVERAGE DUE TO INSOLVENCY

- § 31:9 Effect of insolvency of privately insured employer
- § 31:10 Effect of insolvency of self-insured employer—Alabama Workmen’s Compensation Self-Insurers Guaranty Association
- § 31:11 Effect of insolvency of private insurer—Alabama Insurance Guaranty Association

## TABLE OF CONTENTS

### B. LOSS OF COVERAGE DUE TO CANCELLATION, REVOCATION, OR EXPIRATION

- § 31:12 Private insurance
- § 31:13 Self-insurance

## IV. PRIVATE INSURANCE MATTERS

- § 31:14 Relation of insurer to employees and dependents
- § 31:15 The insurance contract
- § 31:16 Voluntariness of workers' compensation insurance
- § 31:17 Premium rates
- § 31:18 Special discounts and surcharges
- § 31:19 Payback provisions
- § 31:20 Payment of premiums

## V. POLICY PROVISIONS

- § 31:21 Full-coverage policies
- § 31:22 Optional deductibles
- § 31:23 Notice
- § 31:24 Jurisdiction

## VI. COVERAGE

- § 31:25 Types of claims covered
- § 31:26 Noncovered claims
- § 31:27 Penalties

## VII. CLAIMS-ADJUSTING

- § 31:28 Claims adjusters
- § 31:29 Claims adjusting for self-insured employers

### Table of Laws and Rules

### Table of Cases

### Index