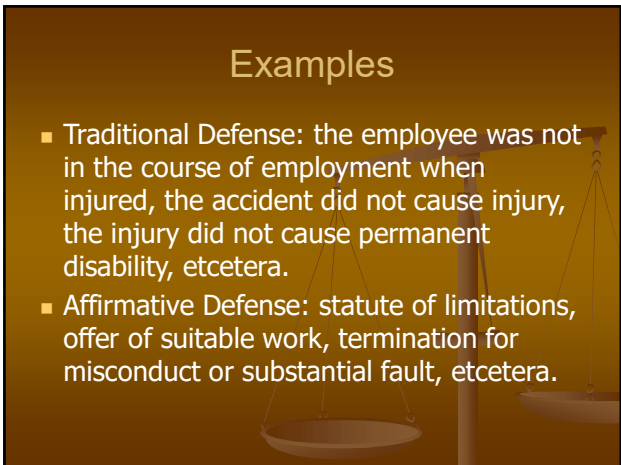


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When is a Medical Opinion Required?

- Needed to dispute causation, such as:
 - Whether an accident, activity, or exposure caused an injury
 - Whether an injury caused disability (a partial or total inability to work)
 - Whether an injury required treatment
- Not needed when:
 - The physician's causation opinion is based on (significantly) inaccurate information.
 - An affirmative defense applies.

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Affirmative Defenses to Treatment Expenses

- Choice of Treatment Providers
- Out-of-State Treatment
- Necessity of Treatment
- Reasonableness of Fees

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Affirmative Defenses to Disability

- Part-time Employees
- Unreasonable Refusal of Treatment
- Wages Earned from Second Job

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Affirmative Defenses to Disability

- Offer of Suitable Employment
- 85-Percent Rule
- Termination or Suspension of Employment
 - Commission of a crime related to employment
 - Violation of drug-use policy during healing period
 - Incarceration

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Misconduct and Substantial Fault

- Effective March 2, 2016
- A defense to TTD when employee is suspended or terminated for misconduct or substantial fault connected to his or her employment
- Not a defense to PPD or Treatment Expenses

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Misconduct

- Misconduct = willful or wanton disregard of an employer's interests
- It can include carelessness or negligence of such degree or recurrence as to manifest culpability, wrongful intent, or evil design of equal severity to such willful or wanton disregard
- E.G., violation of alcohol/drug use policy, theft, harassment, assault, absenteeism

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Substantial Fault

- Substantial Fault = acts or omissions over which an employee exercises control that violate reasonable requirements of the employment.
- Does not include (1) minor infractions (unless repeated after warning), (2) inadvertent errors, or (3) any failure to perform work because of insufficient skill, ability, or equipment.

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Increased or Decreased Compensation

- Violation of Safety Statute or Rule
- Violation of Drug or Alcohol Policy
- New Statute: No Compensation for Disability or Death when Violation of Drug or Alcohol Policy Is Causal to the Injury

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Affirmative Defenses to the Entire Claim

- Notice (30 days) if prejudice results
- Laches (2 years) if no notice of injury
- Statute of Limitations (6 or 12 years)
 - On or after 3/2/16, 6 years for accidental injuries and 12 years for occupational injuries
 - Before 3/2/16, 12 years

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Questions?

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