

# CHARLESTON

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S C H O O L O F L A W

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## Workers' Compensation Course Outline – Fall 2021

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Office Hours: Mondays 5:45 to 6:00  
Upon Request  
Class Time: Mondays 3:00 to 5:45  
Class Location: B 222

**Textbook:** South Carolina Workers' Compensation Law Annotated (Any version from 2008 to 2021.)  
Published by Thompson-West

**Assignments:** Assignments for each week are listed in the syllabus. Assigned reading includes the listed statutes and the accompanying annotations, regulations, and case law.

**Grading:** Final Exam – 70%  
Class Participation – 30%

Students are expected to read the assigned materials and should be prepared to discuss the cases and applicable statutes, annotations, and regulations in class.  
**Class participation is 30% of the final grade.**

**CSOL Disclaimers:** Under *Charleston School of Law policy*, the amount of work for each credit hour of a course must be:

- At least 750 minutes of in-class time (12 ½ hours), which may include 50 minutes of final examination time; and, at least 1800 minutes (30 hours) of out-of-class student work.
- This is a 3-credit hour class, meaning that, in addition to attending classes, you should plan to spend a minimum of 6 hours each week during the semester preparing for class.

**ADA Compliance:** Students with disabilities should contact the Associate Dean for Academic Affairs as soon as possible to request reasonable accommodations should those accommodations be desired.

**Charleston School of Law Attendance Policy:** Under the School of Law's attendance policy:

- No student may miss more than 15 percent (rounded to the nearest whole number) of the class meetings in any course or seminar. A student who is tardy or who exits class early may, at the

discretion of the professor, be marked as absent. If a student exceeds this limit, the student shall not be permitted to take the exam, absent a waiver of sanctions by the academic dean.

- For courses that meet once a week, students may not miss more than 2 class periods during the semester.

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## **Class 1: Introduction & Overview of Workers' Compensation (BPM & VCN) August 16, 2021**

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- I. Workers' Compensation Law
  - a. Context
  - b. Development
  - c. First laws
  - d. South Carolina Workers' Compensation law
  - e. Basics
- II. Structure of the South Carolina Workers' Compensation Commission
- III. Class Overview
- IV. Coverage and Jurisdiction
- V. Exclusive Remedy Provision
- VI. No Fault Compensation Scheme

### **Resources**

- A. South Carolina Workers' Compensation Commission: [www.wcc.sc.gov](http://www.wcc.sc.gov)
- B. Georgia State Board of Workers' Compensation: <https://sbwc.georgia.gov/>
- C. North Carolina Industrial Commission: <http://www.ic.nc.gov/>

### **Reading Assignment**

#### Statutes (w/Annotations) and Regulations

Reg. 67-201

§ 42-1-540

#### Jurisdiction and Coverage Cases

*Hernandez-Zuniga v. Tickle*, 647 S.E.2d 691 (S.C. App. 2007)

*Lester v. S.C. Workers' Compensation Comm'n*, 514 S.E.2d 751 (S.C. 1999)

#### Exclusive Remedy Cases

*Edens v. Bellini*, 597 S.E.2d 863 (S.C. Ct. App. 2004)

*Olmstead v. Shakespeare*, 581 S.E.2d 483 (S.C. 2003)

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- I. Jurisdiction
- II. Employment
- III. Employer
  - a. Place of hire
  - b. Location of employment
  - c. Location of accident
- IV. Employee
  - a. “Employee” or “independent contractor”
- V. Statutory Employer

**Reading Assignment**

Statutes (w/annotations) and Regulations:

§ 42-1-130 through -150  
§ 42-1-310 through -390  
§ 42-1-400 through -460  
§ 42-1-440  
Regs. 67-403 and -404

“Employment” case

*Harding v. Plumley*, 496 S.E.2d 29 (S.C. Ct. App. 1998)

“Employee” and “Employer” cases

*Nolan v. Nat’l Sales, Inc.*, 364 S.E.2d 752 (S.C. 1988)  
*McCreery v. Covenant Presbyterian Ch.*, 383 S.E.2d 264 (S.C. Ct. App. 1989), *rev’d on other grounds*, 303 S.C. 271, 400 S.E.2d 130 (S.C. 1990)\*\**Only read Ct. App. op.*  
*Kirksey v. Assurance Tire Co.*, 443 S.E.2d 803(S.C. 1994)  
*Smith v. Coastal Tire & Auto Serv.*, 207 S.E.2d 810 (S.C. 1974)  
*Simmons v. SC Strong*, 739 S.E.2d 631 (S.C. Ct. App. 2013)  
*Sellers v. Tech Service, Inc.*, 803 S.E.2d 731 (S.C. Ct. App. 2017)

Independent Contractor

*Pikaart v. A&A Taxi, Inc.*, 713 S.E.2d 267 (S.C. 2011)  
*Paschal v. Price.*, 708 S.E.2d 771 (S.C. 2011)  
*Wilkinson v. Palmetto State Transp. Co.*, 676 S.E.2d 700 (S.C. 2009)  
*Lewis v. LB Dynasty, d/b/a Boom Boom Room*, 770 S.E.2d 393 (S.C. 2015)

Statutory Employer

*Edens v. Bellini*, 597 S.E.2d 863 (S.C. Ct. App. 2004) [Class I]  
*Posey v. Proper Mold & Engineering, Inc.*, 661 S.E.2d 395 (S.C. Ct. App. 2008)

- I. Bringing a Claim in South Carolina
- II. “Arising out of” Employment
- III. “In the Course and Scope of” Employment
- IV. Special Scenarios
  - a. “Going to and coming from” rule
  - b. Personal comfort doctrine
  - c. Benefit to the employer

**Reading Assignment**

Statutes (w/annotations)

§ 42-15-10

§ 42-1-160

Bringing a claim in South Carolina

*O’Briant v. Daniel Constr. Co.*, 305 S.E.2d 241 (S.C. 1983)

“Injury” and “Accident” cases

*Sigmon v. Day Co Corp.*, 449 S.E.2d 497 (Ct. App. 1994)

*Creech v. Ducane*, 467 S.E.2d 114 (S.C. App. 1996)

*Grayson v. Gulf Oil*, 357 S.E.2d 479 (Ct. App. 1997)

“Arising Out Of” cases

*Broughton v. South of the Border*, 520 S.E.2d 634 (S.C. Ct. App. 1999)

*Suburban Propane Gas Co. v. Deschamps*, 379 S.E.2d 301 (S.C. Ct. App. 1989)

*Crosby v. Wal-Mart Stores, Inc.*, 499 S.E.2d 253 (S.C. Ct. App. 1998)

*Houston v. DeLoach & DeLoach*, 663 S.E.2d 85 (S.C. Ct. App. 2008)

*Pierre v. Seaside Farms, Inc.*, 386 S.C. 534 (S.C. 2010)

*Matute v. Palmetto Health Baptist*, 705 S.E.2d 472 (S.C. Ct. App. 2011)

*Whigham v. Jackson Dawson Communications*, 763 S.E.2d 420 (S.C. 2014)

Recent Idiopathic Developments

*Nicholson v. S.C. Dept. of Social Services*, 769 S.E.2d 1 (S.C. 2015)

*Barnes v. Charter 1 Realty*, 768 S.E.2d 651 (S.C. 2015)

“In the Course and Scope Of” cases

*Evans v. Coats & Clark*, 328 S.C. 467 (S.C. App. 1997)

*Gibson v. Spartanburg School Dist. #3*, 526 S.E.2d 725 (S.C. Ct. App. 2000)

*Wright v. Bi-Lo*, 442 S.E.2d 186 (S.C. Ct. App. 1994)

*Pratt v. Morris Roofing*, 594 S.E.2d 272 (S.C. 2004)

*Osteen v. Greenville County School Dist.*, 508 S.E.2d 21 (S.C. 1998)

*Hall v. Desert Aire Inc.*, 656 S.E.2d 753 (S.C. Ct. App. 2008)

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Labor Day – No Class

September 6, 2021

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**Class 4: Average Weekly Wage and Compensation Rate (BPM)**

September 13, 2021

- I. General concepts
- II. Computation
- III. Concurrent Wages
- IV. Exceptional Circumstances

**Reading Assignment**

Statutes (w/annotations) and Regulations

§§ 42-1-40 through -50

Reg. 67-1603.

Cases

*Elliott v. S.C. Dep't of Trans.*, 607 S.E.2d 90 (S.C. Ct. App. 2004)

*Roberts v. McNair Law Firm*, 366 S.C. 50 (S. C. Ct. App. 2005)

*Sellers v. Pinedale Residential Ctr.*, 564 S.E.2d 694 (S.C. Ct. App. 2002)

*Wright v. Wright*, 411 S.E.2d 829 (S.C. Ct. App. 1991)

*Anderson v. Baptist Med. Ctr.*, 541 S.E.2d 526 (S.C. 2001)

*Forrest v. A.S. Price Mechanical*, 644 S.E.2d 784 (S.C. Ct. App. 2007)

*Bazen v. Badger R. Bazen Co.*, 388 S.C. 58 (S.C. Ct. App. 2010)

*Pugh v. Piedmont Mech.*, 719 S.E.2d 676 (S.C. Ct. App. 2011)

*Stephen v. Avins Const. Co.*, 478 S.E.2d 74 (S.C. Ct. App. 1996)

*Williams v. Drywall*, 739 S.E.2d 892 (S.C. Ct. App. 2013)

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- I. Time Line
- II. Temporary Compensation
  - a. Temporary Total Disability (TTD)
  - b. Temporary Partial Disability (TPD)
- III. Permanent Compensation
  - a. Scheduled Permanent Partial Disability (PPD) § 42-9-30 and Reg. 67-1101
  - b. Loss of Wage-Earning Capacity (LWEC) Permanent Partial Disability § 42-9-20
  - c. Permanent and Total Disability (PTD) § 42-9-10

**Reading Assignment**

Statutes (w/annotations) and Regulations

§ 42-9-10 through -35

§ 42-9-150 and -190

§ 42-9-210 through -270

Reg. 67-502 through 67-510

Regs. 67-1101 through 67-1105

Reg. 67-1602, -1605

Cases explaining the Medical Model & Economic Model of Benefits

*Singleton v. Young Lumbar Co.*, 114 S.E.2d 837 (S.C. 1960)

*Fields v. Owens Corning Fiberglass*, 393 S.E.2d 172 (S.C. 1990)

*Wigfall v. Tideland Util., Inc.*, 580 S.E.2d 100 (S.C. 2003)

*Hutson v. S.C. State Ports Authority*, 732 S.E.2d 500 (S.C. 2012)

*Clemmons v. Lowe's Home Centers, Inc. – Harbison*, 803 S.E.2d 268 (S.C. 2017)

Case explaining the timeline for TTD/MMI/PPD

*Curiel v. Enviromental Management Services*, 655 S.E.2d 482 (S.C. Ct. App. 2007)

Scheduled Injury Cases

*Lail v. Georgia Pacific Corp.*, 328 S.E.2d 911 (S.C. 1985)

*Lee v. Harborside Café*, 564 S.E.2d 354 (S.C. Ct. App. 2002)

*Watson v. Xtra Mile Driver Training*, 732 S.E.2d 190 (S.C. Ct. App. 2012)

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- I. Time Line
- II. Temporary Compensation
  - a. Temporary Total Disability (TTD)
  - b. Temporary Partial Disability (TPD)
- III. Permanent Compensation
  - a. Scheduled Permanent Partial Disability (PPD) § 42-9-30 and Reg. 67-1101
  - b. Loss of Wage-Earning Capacity (LWEC) Permanent Partial Disability § 42-9-20
  - c. Permanent and Total Disability (PTD) § 42-9-10

Bases for increasing benefits

*Linen v. Ruscon Constr. Co.*, 332 S.E.2d 211 (S.C. 1985)

*Bass v. Kenco Group*, 622 S.E.2d 577 (S.C. Ct. App. 2005)

Aggravation of a Pre-Existing Condition

*Mullinax v. Winn-Dixie Stores, Inc.*, 458 S.E.2d 76 (S.C. Ct. App. 1995)

*Burnette v. City of Greenville*, 737 S.E.2d 200 (S.C. Ct. App. 2012)

Limits on Benefits

*Medlin v. Greenville County*, 401 S.E.2d 667 (S.C. 1991)

*Pollack v. Southern Wine & Spirits of America*, 747 S.E.2d 430 (S.C. 2013)

*Adickes v. Philips Healthcare*, Unpub. Opinion No. 2019-UP-027 (S.C. Ct. App. 2019)

Refusal of Suitable Alternative Employment

*Johnson v. Rent-A-Center, Inc.*, 730 S.E.2d 857 (S.C. 2012)

*Cranford v. Hutchinson Construction*, 731 S.E.2d 303 (S.C. Ct. App. 2012)

*Davis v. UniHealth Post Acute Care*, 741 S.E.2d 770 (S.C. Ct. App. 2013)

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- IV. Lifetime benefits
- V. Death benefits
- VI. Lumps sum benefits and weekly benefits

**Reading Assignment**

Statutes (w/annotations) and Regulations

- § 42-9-10
- § 42-9-110 through -140
- § 42-9-280 through -290
- § 42-9-301
- Regs. 67-901 through -905
- Regs. 67-1601 through -1602
- Regs. 67-1605 through -1606

Lifetime Benefits

- Pearson v. JPS converter & Indus. Corp.*, 327 S.C. 393 (S.C. Ct. App. 1997)
- Clark v. Aiken County Government*, 620 S.E.2d 99 (S.C. Ct. App. 2005)
- Sparks v. Palmetto Hardwood, Inc.*, 750 S.E.2d 61 (S.C. 2013)
- Crisp v. SouthCo, Inc.*, 738 S.E.2d 835 (S.C. 2013)
- Williams v. Drywall*, 739 S.E.2d 892 (S.C. Ct. App. 2013) – CLASS 4

Lump Sum Benefits

- Cox v. Bellsouth Commc'ns*, 589 S.E.2d 766 (S.C. Ct. App. 2003) [Class I]

- VII. Medical benefits
  - A. Employer's responsibility for treatment
  - B. Employee's refusal of medical treatment
  - C. Maximum medical improvement (MMI)
  - D. Communications with health care providers
  - E. Independent Medical Examinations
  - F. Medical care after maximum medical improvement
  - G. Prosthetic devices

Statutes

- §42-15-60 – §42-15-95

Cases

- Singleton v. Young Lumber Company*, 114 S.E.2d 837 (1960) [Class 5]
  - Wardlaw v. JG Ridgeway Constr. Co.*, 46 S.E.2d 662 (1948)
  - Dodge v. Bruccoli, Clark, Layman, Inc.*, 514 S.E.2d 593 (S.C. Ct. App. 1999)
  - Brown v. Bi-Lo, Inc.*, 581 S.E.2d 836 (S.C. 2003)
  - Sanders v. Mead Westvaco*, 638 S.E.2d 66 (S.C. Ct. App. 2006)
  - Adkins v. Georgia Pacific Corp.*, 350 S.C. 34, 564 S.E.2d 339 (S.C. Ct. App. 2002)
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**Class 8: Forms, Practice, Procedures, Orders and Settlements (BPM) October 18, 2021**

- I. Time line
- II. Workers' Compensation Commission Forms
- III. Informal Conferences
- IV. Single Commissioner Hearings
  - a. Forms 50 and 51
  - b. Forms 15 and 21
  - c. Termination/Suspension of Temporary Benefits
    - i. Refusal of medical treatment
    - ii. Refusal of suitable employment
- V. The Single Commissioner Trial Process
  - a. PHB
  - b. Full Evidentiary Hearing – Preponderance of the Evidence
  - c. Administrative Hearing
  - d. Decision and Order
- VI. Appellate Process and Standard of Review
  - a. Full Commission
  - b. Court of Appeals
- VII. Workers' Compensation Commission Form 16A and Accompanying 14B
- VIII. Orders
- IX. Consent Orders
- X. Clincher Agreements
- XI. Social Security/Medicare/Medicaid issues
- XII. Attorney Fees and Litigation Expense

**Reading Assignment**

Statutes (w/annotations) and Regulations

§ 42-9-390

§ 42-15-90

§ 42-17-10 through -90

§ 1-23-310 through -380 (Administrative Procedures Act)

Reg. 67-203

Regs. 67-206 through -208

Regs. 67-214 through -216

Regs. 67-601 through -615

Regs. 67-701 through -711

Regs. 67-801 through -804

Regs. 67-1204 through -1207

Cases

*James v. Anne's, Inc.*, 701 S.E.2d 730 (S.C. 2010)

*Wilson v. Charleston county School District*, 798 S.E.2d 449 (S.C. Ct. App. 2017)

- I. Repetitive Trauma
- II. Heart Attacks
- III. Strokes
- IV. Heat Stroke / Heat Exhaustion / Exposure

**Reading Assignment**

**Statutes (w/annotations) and Regulations**

§ 42-1-160

§ 42-11-10 through -200

§ 42-1-172

I. **Repetitive Trauma**

*Pee v. AVM*, 573 S.E.2d 785 (S.C. 2002)

*Murphy v. Owens Corning*, 710 S.E.2d 454 (S.C. Ct. App. 2011)

*Michau v. Georgetown County*, Op. No. 27064 (S.C. Sup. Ct. filed 11/21/11)

II. **Heart attack cases**

*Kearse v. S.C. Wildlife Resources Dep't*, 115 S.E.2d 183 (S.C. 1960)

*McWhorter v. Dep't of Ins.*, 165 S.E.2d 365 (S.C. 2000)

*Watt v. Piedmont Auto.*, Op. No. 4572 (S.C. Ct. App. filed June 25, 2009)

III. **Strokes/Aneurysm**

*Nawa v. Wackenhut*, 341 S.E.2d 800 (S.C. Ct. App. 1986)

*Jennings v. Chambers Dev. Co.*, 516 S.E.2d 453 (S.C. Ct. App. 1999)

IV. **Heat Stroke/Heat Exhaustion/Exposure**

*Holley v. Owens-Corning Fiberglas Corp.*, 392 S.E.2d 804 (S.C. Ct. App. 1990)

*Ervin v. Richland Memorial Hospital*, 386 S.C. 245 (S.C. Ct. App. 2009)

*Hiers v. Brunson Constr. Co.*, 70 S.E.2d 211 (S.C. 1952) [Class 3]

*Sturkie v. Ballenger*, 235 S.E.2d 120 (S.C. 1977) [Class 3]

*Tims v. J.D. Kitts Construction*, 713 S.E.2d 340 (S.C. Ct. App. 2011)

**Reading Assignment**

- V. Occupational Stress (Mental/Mental)  
*Fields v. Owens Corning Fiberglas Corp.*, 393 S.E.2d 172 (S.C. 1990)  
*Stokes v. First Nat'l Bank*, 410 S.E.2d 248 (S.C. 1991)  
*Shealy v. Aiken County*, 535 S.E.2d 438 (S.C. 2000)  
*Bentley v. Spartanburg*, 730 S.E.2d 296 (S.C. 2012)  
*Martinez v. Spartanburg County*, 753 S.E.2d 436 (S.C. 2014)
- VI. Occupational Disease  
*Hanks v. Blair Mills*, 335 S.E.2d 91 (S.C. Ct. App. 1985)  
*Mohasco Corp. v. Rising*, 357 S.E.2d 456 (S.C. 1987)  
*Brunson v. American Koyo Bearings*, 718 S.E.2d 755 4908 (S.C. Ct. App. 2011)  
*Skinner v. Westinghouse*, 716 S.E.2d 443 (S.C. 2011)

**Reading Assignment**

Statutes (w/annotations) and Regulations

- S.C. Code Ann. § 42-15-20  
S.C. Code Ann. § 42-15-40  
S.C. Code Ann. § 42-15-50  
S.C. Code Ann. § 42-15-90  
S.C. Code Ann. §§ 42-11-110 *et. seq.* (occupational disease claims)

Notice cases (§ 42-15-20)

- Etheredge v. Monsanto Co.*, 562 S.E.2d 679 (S.C. Ct. App. 2002)  
*Lizee v. S.C. Dep't of Mental Health*, 623 S.E.2d 860 (S.C. Ct. App. 2006)  
*King v. International Knife & Saw*, 718 S.E.2d 227 (S.C. Ct. App. 2011) (repetitive trauma)  
*Nero v. S.C. Dept. of Transportation*, 804 S.E.2d 269 (S.C. Ct. App. 2017)

Statute of limitations cases (§ 42-15-40)

- Hucks v. Green's Fuel*, 148 S.E.2d 149 (S.C. 1966)  
*Hopkins v. Floyd's Wholesale*, 382 S.E.2d 907 (S.C. 1989)  
*Holmes v. National Serv. Indus.*, 717 S.E.2d 751 (S.C. 2011)  
*Wilson v. Charleston County School District*, 798 S.E.2d 449 (S.C. Ct. App. 2017)
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Statutes (w/annotations) and Regulations

S.C. Code Ann. § 42-9-60

Reg. 67-603

Intentional Injuries (§ 42-9-60)

**Intoxication**

*Chandler v. Suitt Constr. Co.*, 343 S.E.2d 633 (S.C. Ct. App. 1986)

*Hall v. Desert Aire Inc.*, 656 S.E.2d 753 (S.C. Ct. App. 2008)

**Intentional Acts**

*Kinsey v. Champion Amer. Serv. Ctr.*, 232 S.E.2d 720 (S.C. 1977)

**Suicide as an Intentional Act**

*Owens v. Ocean Forest Club*, 12 S.E.2d 839 (S.C. 1941)

Fraud in the application

*Cooper v. McDevitt & Street, Co.*, 196 S.E.2d 833 (S.C. 1973)

*Frederick v. Wellman, Inc.*, 385 S.C. 8 (S.C. Ct. App. 2009)

*Brayboy v. WorkForce*, 681 S.E.2d 567 (S.C. 2009)

*Rabon v. Arrow Exterminating*, 713 S.E.2d 347 (S.C. Ct. App. 2011)

Expected injuries

*Capers v. Flautt*, 407 S.E.2d 660 (S.C. Ct. App. 1991)

*Havird v. Columbia YMCA*, 418 S.E.2d 329 (S.C. Ct. App. 1992)

*Landry v. Carolinas Healthcare Systems*, 719 S.E.2d 288 (S.C. Ct. App. 2011)

Laches

*Richey v. Dickinson*, 598 S.E.2d 307 (S.C. Ct. App. 2004)

*Jervey v. Martinez Env.*, 721 S.E.2d 469 (S.C. App. 2012)

- I. Third Party Claims and Statutory Lien
- II. Procedures for Workers' Compensation Lien Reductions

**Reading Assignment**

Statutes (w/annotations)

§ 42-1-540 through -580

Cases

*Breeden v. TCW, Inc./Tennessee Exp.*, 584 S.E.2d 379 (S.C. 2003)

- BRING QUESTIONS ON TOPICS THAT YOU WOULD LIKE TO REVIEW