

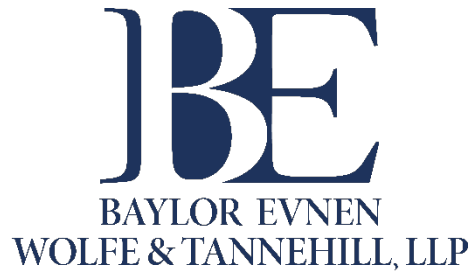
2026

Nebraska

Handling Workers' Compensation Claims



BAYLOR EVNEN
WOLFE & TANNEHILL, LLP



Handling Nebraska Workers' Compensation Claims

Baylor Evnen Wolfe & Tannehill, LLP

Lincoln Main Office
Union Bank Place
1248 O Street | Suite 900
Lincoln, NE 68508

Phone 402.475.1075 | Fax 402.475.9515

Website: <http://www.baylorevn.com> | Press: <https://baylorevn.com/blog> | Resources: <https://baylorevn.com/resources/>

WORKERS' COMPENSATION ATTORNEYS

Dallas D. Jones

djones@baylorevn.com

Michael D. Reisbig

mreisbig@baylorevn.com

David A. Dudley

ddudley@baylorevn.com

Micah C. Hawker-Boehnke

mhawker-boehnke@baylorevn.com

Paul T. Barta

pbarta@baylorevn.com

Henry S. Jaros

hjaros@baylorevn.com

Thomas B. Shires

tshires@baylorevn.com

Adam S. Barrett

abarrett@baylorevn.com

Cameron W. Azimi

cazimi@baylorevn.com

This outline for Handling Nebraska Workers' Compensation Claims is intended for general information purposes only and is not meant to replace legal counsel. We urge you to consult an attorney for any issue regarding the applicability or interpretation of any provision of the Nebraska Workers' Compensation Act. This is not intended to be a complete summary of Nebraska's law.

© 2026 Baylor Evnen Wolfe & Tannehill, LLP. All Rights Reserved.

TABLE OF CONTENTS

I. JURISDICTION	4
A. Legitimate Nebraska Claims.....	4
1. Contract of Hire	4
2. Nebraska Accident	4
3. Nebraska Business	4
4. Principal Place of Business.....	4
B. Venue	5
C. Ancillary Jurisdiction.....	5
D. Collection Actions	5
E. Exclusive Remedy	5
II. EMPLOYMENT RELATIONSHIP	6
A. Employer.....	6
1. Traditional Employers	6
2. Agricultural Employers.....	6
3. Statutory Employers.....	6
B. Employees.....	7
1. Traditional Employees	7
2. Executive Officers.....	7
3. Self-Employed Persons	7
4. Independent Contractors	8
a. Amount of control.....	8
b. Whether a worker is engaged in a distinct occupation or business.....	8
c. Type of occupation involved.....	8
d. Skill required in the particular occupation.....	9
e. Which party supplies the instrumentalities, tools or place of work	9
f. Length of employment period.....	9
g. Method of payment	9
h. Whether the work is part of the regular business of the employer	9
i. Whether the parties believe they are creating an employer employee relationship.....	10
j. Whether the employer is or is not in business	10
5. Loaned Employee and Temporary Employee.....	12
6. Casual Employee	13
7. Volunteers	13
C. Contract of Hire	13
III. COMPENSABLE EVENTS	13
A. Accident	14
1. Traditional Accidents.....	14
2. Repetitive or Cumulative Trauma.....	14
a. Identifiable point in time.....	15
b. Discontinue employment	16
(1) Employee misses work.....	16
(2) Employee is unable to perform work required.....	16
(3) Within a reasonably-limited period of time	17

(4) Seeks medical treatment.....	17
B. Occupational Disease.....	17
1. Characteristic of and Peculiar to	17
2. Ordinary Diseases of Life	18
3. Date of Injury	18
4. Average Weekly Wage	19
5. Statute of Limitations.....	20
6. Last Injurious Exposure	20
C. Cardiovascular Injuries	21
1. Legal Test.....	21
2. Medical Test.....	21
D. Mental/Psychological Injuries	22
1. Physical-Mental	22
2. Mental-Mental.....	22
3. First Responder Exceptions	22
IV. ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT	23
A. “Arising Out Of” and “In the Course Of”	23
B. Positional Risk Doctrine	24
C. Deviation from Time and Place of Employment	25
D. Accidents on Employer’s Premises	25
E. Coming and Going Rule	25
1. Commercial Traveler	25
2. Dual Purpose	26
3. Personal Comfort and Convenience.....	26
4. Special Errand Exception.....	26
5. Employer-Supplied Transportation.....	27
6. Returning Home for a Necessary Item.....	27
7. Parking Lots Owned by Employer.....	27
8. Parking Lots Not Owned by Employer.....	27
9. Public Street	28
10. Commercial Shopping Center Parking Lot.....	28
F. Act of God	28
G. Miscellaneous	28
1. Assaults	28
2. Horseplay	29
3. Recreational/Social Events	29
4. Work Breaks	30
5. Pre-Employment Physical.....	30
6. Accident While En Route to Medical Treatment for Work Injury	30
V. CAUSATION	30
A. Burden of Proof	30
1. Plaintiff’s Burden.....	30
2. Exception: Unexplained Falls	30
B. Necessity of Expert Opinion.....	31
C. What Constitutes an Expert Opinion	31
D. Sufficiency of Expert Opinion.....	31

E.	Admissibility of Expert Opinion.....	32
F.	Successive Events Acting on Pre-Existing Condition	33
1.	Natural Progression of Pre-Existing Condition	33
2.	New Injury Combining with Pre-Existing Condition	33
3.	Aggravation of Pre-Existing Condition	33
4.	Aggravations v. Recurrences	34
5.	Independent Intervening Cause.....	34
6.	Successive Accidents, Different Employers/Carriers	35
7.	Necessity of Compensable Injury for Each Subsequent Work Aggravation	35
VI.	NOTICE OF INJURY	35
VII.	AFFIRMATIVE DEFENSES.....	36
A.	Statute of Limitations.....	36
1.	Tolling of the Statute of Limitations.....	37
2.	Exceptions to the Statute of Limitations	37
a.	Latent and progressive injury.....	37
b.	Modification claim.....	37
c.	Previous award of future medical expenses	37
B.	Willful Negligence.....	38
C.	Intoxication	39
D.	Violation of a Safety Rule	39
E.	False Representation	40
VIII.	AVERAGE WEEKLY WAGE	40
A.	Continuous Employment	40
1.	Overtime	40
2.	Ordinary Work Week.....	41
3.	Hybrid Employment Arrangements	41
4.	Bonuses, Board and Lodging	41
5.	Injuries Occurring the First Day or Few Days at Work	42
6.	Pay Increase During the 26 week Period	42
B.	How to Calculate Average Weekly Wage	43
1.	Calculation for Temporary Disability Purposes	43
2.	Calculation for Permanent Disability Purposes	43
a.	Where the employee averages 40 hours per week or more.....	43
b.	Where the employee averages less than 40 hours per week	43
C.	Continuous Intermittent Employment	43
D.	Seasonal Employment.....	44
IX.	INDEMNITY BENEFITS	44
A.	Waiting Period (For Both Temporary and Permanent Disability).....	44
B.	Temporary Disability	44
1.	Temporary Total Disability.....	44
2.	Temporary Partial Disability.....	45
C.	Permanent Disability.....	46
1.	Body As a Whole Injuries.....	47
a.	Entitlement to assessment of loss of earning capacity	47
b.	Determination of loss of earning capacity	48

(1) Identifying the relevant labor market for assessing loss of earning capacity	48
(2) Additional considerations regarding loss of earning capacity	49
(3) Timing of loss of earning capacity determination.....	50
2. Scheduled Member Disability.....	50
a. Calculating permanent partial disability for a scheduled member injury	51
b. Disability to Two or More Scheduled Members from the Same Accident.....	51
(1) Total Loss of Use of Two Members.....	51
(2) Partial Loss of Use of Two Members.....	51
(3) Partial Loss of Use of Two Members—the “30% Rule”	52
3. Vision Loss	55
4. Hearing Loss	55
D. Death Benefits.....	55
1. Presumed Dependent	56
2. Actually Dependent	56
3. Calculating Death Benefits	57
E. Apportionment	57
F. Maximum and Minimum Benefit Rates	58
X. MEDICAL CARE.....	59
A. Choice of Physician	59
1. Employee's Right to Choose	59
2. Employer's Right to Choose.....	59
3. Change in Physician.....	59
4. Referral	59
B. Unlimited Medical Expenses	60
1. Reasonable and Necessary	60
2. Relieves Pain.....	60
C. Medicines.....	60
D. Chiropractic Treatment.....	61
E. Medical Services Included.....	61
F. Home Healthcare	61
G. Moving Expenses.....	62
H. Mileage Expense.....	62
I. Future Medical Expenses Awarded	62
J. Independent Medical Examiner (IME)	63
K. Defense Medical Examiner (DME)	63
L. Schedule of Fees	63
M. Failure to Comply with Recommended Treatment.....	65
XI. VOCATIONAL REHABILITATION.....	65
A. Entitlement to Vocational Rehabilitation	65
1. Suitable Work/Employment.....	66
2. Evidence Required to Show Inability to Perform Suitable Employment	66
3. Undocumented Alien Workers and Vocational Rehabilitation	67
B. Appointment/Selection/Payment of Vocational Counselors	67
1. Agreement and/or Appointment of a Vocational Rehabilitation Counselor.....	67
2. Fee for Vocational Rehabilitation Evaluation and Vocational Plan	68
3. Fee for Vocational Rehabilitation Counselor for Loss of Earning Power Evaluation.....	68

C.	Development of a Vocational Rehabilitation Plan	68
D.	English Language Learning (ELL)	69
E.	Rebuttable Presumption of Correctness.....	69
F.	Payment of Benefits During Vocational Rehabilitation	69
G.	Reduction in Benefits for Plaintiff's Failure to Participate in Vocational Rehabilitation ..	70
XII.	MANAGED CARE PLAN.....	70
A.	Employee's Right to Choose Physician Despite Managed Care Plan	70
B.	Geographical Considerations	70
XIII.	PENALTIES/ATTORNEY'S FEES/INTEREST/COSTS	70
A.	Penalties	71
1.	Indemnity Benefits	71
2.	Medical Bills	71
B.	Attorney's Fees.....	72
1.	Nonpayment of Benefits	72
2.	Employer Appeal, No Reduction	72
3.	Employee Appeal, Obtains Award.....	72
4.	Employee Appeal, Obtains Increase	73
C.	Lump Sum Settlement	73
D.	Settlement by Release	73
E.	Interest	73
F.	Court Costs	73
XIV.	MODIFICATION OF A PRIOR AWARD.....	73
A.	In General	73
B.	When a Running Award for Temporary Total Disability Benefits Must be Modified.....	74
XV.	SUBROGATION	75
A.	Statutory Right.....	75
B.	Effects of Subrogation	76
C.	Attorney's Fees	76
XVI.	SECOND INJURY FUND	77
XVII.	GENERAL FILE HANDLING RECOMMENDATIONS.....	77
A.	Best Practices for Claims Handling Begin <i>Immediately</i> After the Accident	77
B.	Employer Should Take the Employee's Statement After the Accident.....	78
C.	Employers Should Keep Contemporaneous Records	79
D.	Employers Should Take Steps to Avoid a Claim of Retaliatory Discharge or Demotion by the Injured Worker	80
E.	Consider Direct Communication with Claimant's Medical Providers	80
F.	Effectively Handle the Claim Today While Planning for the Future	81
G.	Best Practices for Avoiding Penalties and Attorney's Fees	81
XVIII.	STRATEGIES FOR MINIMIZING EXPOSURE	82
A.	Temporary Disability Strategies	82
B.	Permanent Disability Strategies	83
C.	Medical Strategies.....	83

XIX. CLAIMS RESOLUTION	84
A. Continue to Pay Benefits	84
B. Lump Sum Settlement (Complete Settlement - Including Medical Settlement)	85
1. Available with Court Approval.....	85
2. Court Generally Will Approve Settlement if These Factors are Established	85
3. Exception	85
C. Settlement by Release of Liability	86
D. Medicare and Medicaid	87
1. The Importance of Considering Medicare's Interests.....	87
a. Reporting claims	88
b. Past conditional payments.....	88
c. Medicare set aside accounts for future medical expenses.....	88
2. The Importance of Considering Medicaid's Interests.....	89
3. The Importance of Considering a Self-Funded Health Plan's Interests	90

For complete copies of the NE Handling book,
please email our marketing coordinator at
bemarketing@baylorevnen.com.