

# JPI

# WORKING

# for you

Fighting for Workers' Rights  
Fall 2015



## PENNSYLVANIA WAGE PAYMENT AND COLLECTION LAW

Whether we love our job or hate it, we all work for wages. Most employees live from paycheck to paycheck so even a brief interruption in income can have devastating consequences. Although most employers pay their employees promptly and in full, what recourse does an employee have when the employer refuses to pay the employee his or her due?

The Wage Payment and Collection Law (WPCL) is a Pennsylvania employment law that provides a means by which employees are able to recover unpaid wages from their employers. The WPCL was enacted to provide a vehicle for employees to enforce payment of their wages and compensation held by their employers. Its main purpose is to remove some of the obstacles employees face in litigation by providing employees with a legal remedy when an employer breaches its contractual obligation to pay wages. It establishes an employee's right to enforce payment of wages and compensation to which an employee is otherwise entitled by the terms of an agreement which can be oral or in writing.

Under the WPCL, wages are defined as all earnings of an employee, regardless of whether determined on a time, task, piece, commission or other method of calculation. The law also provides that fringe benefits or wage supplements are included within the definition of wages. Fringe benefits include separation pay, unpaid vacation, holiday or guaranteed pay, and any other amount to be paid pursuant to an agreement to the employee, or for the benefit of the employee.

The WPCL defines the term "employer" broadly. "Employer" includes every person, firm, partnership, association, corporation, receiver or other officer of a court of this Commonwealth, and any agent or officer of the above-mentioned classes employing any person in this Commonwealth. Inclusion of "agent or officer" means that a corporate officer may be personally liable for the corporation's failure to pay wages.

The WPCL provides no official definition of the term "employee." While the WPCL applies only to employees and not to independent

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For more than 75 years, the attorneys of Jubelirer, Pass & Intrieri have served as trusted allies for those we represent.

- Labor and Employment Law
- Workers' Compensation
- Personal Injury
- Social Security Disability
- Estate Planning and Administration
- Driver's License and DUI Issues
- Civil Litigation

Jubelirer, Pass & Intrieri has served as legal counsel for more than 80 local and national labor organizations in various industries in both the public and private sectors. The lawyers at JPI have represented working people and their families in a variety of legal proceedings.

JPI has a well-established track record protecting and enforcing workers' rights. Our attorneys are honored to have been named among Pennsylvania Super Lawyers, Pittsburgh's Top-Rated Lawyers, and Best Lawyers in America. JPI has been designated as a Top-Tier Law Firm by *U.S. News & World Report*.

***Let us serve you and your family.***



# INSURANCE BAD FAITH

Effective July 1, 1990, the Pennsylvania Legislature created a new cause of action for bad faith against insurance companies. Under the bad faith statute, a finding of bad faith can lead to the imposition of interest, court costs, attorney's fees and punitive damages against an insurance company.

The burden of proving bad faith is on the insured, essentially the policyholder. Negligence or bad judgment on the part of the insurance carrier is insufficient to establish bad faith. In order to establish bad faith in the handling of a claim, an insured must prove that: **(1)** the insured did not have a reasonable basis for denying benefits under the policy; and **(2)** the insured knew or recklessly disregarded its lack of a reasonable basis for denying the claim.

It is important to emphasize that mere non-payment of a claim in and of itself is not bad faith. Bad faith conduct requires proof the carrier failed to act in good faith through self-interest or ill-will; mere negligence or bad judgment is not bad faith.

However, in situations where the court has found evidence of bad faith, the carrier can be forced to pay millions of dollars for their actions.



This was readily apparent in the case of *Berg v. Nationwide*, in which the defendant carrier was forced to pay over \$21 million for its bad faith conduct. This case arose out of an automobile collision which resulted in a property damage

claim of approximately \$12,500.00. Rather than accepting the fact plaintiff's Jeep was a total loss, Nationwide concealed the fact its own appraisal had declared the vehicle a total loss and instead

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## PENNSYLVANIA WAGE PAYMENT *and* COLLECTION LAW

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contractors, the fact that an employer classifies an individual as an independent contractor is not determinative, as employers frequently misclassify individuals whom the law deems as employees, as independent contractors. In determining whether an individual is an employee or independent contractor under the WPCL, courts look to the following factors: the control of the manner that work is to be performed; responsibility for results; terms of any agreement between the parties; the nature of the work or occupation; the skill required for performance of the work; whether the individual performing the work is engaged in a distinct occupation or business; which party supplies the tools or equipment to perform the work; whether payment is made

by the amount of time worked or by the job; whether the work is part of the regular business of the employer; and the right to terminate the employment at any time.

The WPCL provides that whenever an employer separates an employee from the payroll, or whenever an employee quits or resigns employment, the wages or compensation earned are due and payable on the next regular pay day on which such wages would otherwise be due and payable. If there is a dispute over wages, the employer is required to provide written notice to the employee of the amount of wages which the employer believes is due and must pay such amount without condition within the time set

by the law. Acceptance of any payment by the employee does not constitute a release as to any disputed amount.

The WPCL permits any employee or any group of employees to bring a lawsuit to recover any unpaid wages, costs and reasonable attorney's fees. Additionally, the WPCL can impose liquidated damages for wages remaining unpaid for thirty (30) days beyond the regularly scheduled pay day or, where no regularly scheduled pay day is applicable, sixty (60) days beyond the agreement, award or other act making wages payable. The amount of liquidated damages is 25 percent of the total wages due or \$500.00, whichever is greater.

If you have questions regarding Pennsylvania's Wage Payment and Collection Law, please give us a call.



For more, go to [jpilaw.com/about-jpi/practice-overview.html](http://jpilaw.com/about-jpi/practice-overview.html)



# NEWS *and Events*

## JPI WELCOMES NEW ASSOCIATE, **PATRICK LEMON**



Born and raised in Pittsburgh, Patrick comes from a proud union family.

Patrick obtained a B.A. from Penn State University with a double major in Spanish and Sociology. He then graduated from the University of Pittsburgh School of Law after completing a year of service with Americorps. While at Pitt, Patrick served as a managing editor of the *University of Pittsburgh Law Review*. He interned for the ACLU of Pittsburgh, the Honorable Nora Barry Fischer in the United States District Court for the Western District of Pennsylvania, and Lawyers for Human Rights in South Africa. During law school, Patrick was also

a teaching assistant and represented clients in the unemployment compensation practicum.

Prior to joining JPI, Patrick completed a judicial clerkship with the Honorable R. Stanton Wettick in the Allegheny County Court of Common Pleas Commerce and Complex Litigation Center. Patrick is admitted to practice law in the Commonwealth of Pennsylvania. His practice focuses on labor and employment law, as well as workers' compensation law.

Patrick enjoys traveling, being outdoors, and he is an avid Pittsburgh sports fan.

*Patrick obtained a B.A. from Penn State University with a double major in Spanish and Sociology.*

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## JPI WELCOMES NEW ADDITION TO THE FIRM, **CARA STIFFLER**

Cara joins our team at JPI as a legal administrative assistant. Please join us in welcoming her when you call the office or see her at the reception desk.

Cara was born right here in Pittsburgh and is a hometown sports fan—“Go Steelers, Pens and Pirates”! Growing up in the suburbs, Cara graduated from Peters Township High School in 2008. She then attended California University of Pennsylvania where she earned a Bachelor of Science in Justice Studies in May 2012.

While not at work, Cara enjoys hanging out with her family and friends, traveling, trying new restaurants around town, and attending Pittsburgh sporting events. She is an avid supporter of the Leukemia and Lymphoma Society, in honor of her father who passed away from leukemia in September 2008. Cara has volunteered at many *Light the Night Walks* in the area. She has also raised money and donated a significant amount of time to help fight the war on cancer.





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## INSURANCE BAD FAITH

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repaired the vehicle to save money. Following a trial, the court found that Nationwide knew the vehicle could not be properly repaired.

Nationwide returned the vehicle to the plaintiffs and let plaintiffs drive the car for two years, despite knowing the vehicle was unsafe. When plaintiffs subsequently filed a lawsuit over the defective repairs, Nationwide proceeded to litigate the case for 18 years. During discovery, it was learned Nationwide spent almost \$3 million in attorney's fees and costs on a \$12,500.00 claim. The court ultimately concluded the defendant engaged in egregious conduct and, as a result, awarded \$18 million in punitive

damages and \$3 million in attorney's fees. In rendering the verdict, the trial court made it abundantly clear it considered Nationwide's conduct to be both immoral and reprehensible.

In conclusion, bad faith claims against insurance carriers can result in multi-million dollar verdicts. However, as previously noted, mere non-payment of a claim is not bad faith. Instead, successful pursuit of such a claim requires proof

the insurer knew or recklessly disregarded its lack of a reasonable basis for denying the claim. In such a lawsuit, the policyholder must establish bad faith by clear and convincing evidence, which is the most difficult burden of proof in civil litigation. If you want to discuss a bad faith claim against an insurance carrier or claims for personal injuries attributable to automobile collisions or premises liability, please contact the attorneys at Jubelirer, Pass & Intrieri, P.C.

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## TORT REFORM: WHAT IS IT?

**Tort reform refers to proposed changes in the American civil justice system that aims to reduce the ability of victims to bring tort litigation and the damages they can receive.**

According to the tort reform advocates, placing caps on damage awards is the only way to protect doctors and businesses from money-grabbing trial attorneys. The truth is tort reform does not save lives or prevent injuries. Instead, it permits wrongdoers to avoid accountability and boosts insurance carriers' profits. What is constantly overlooked by tort reform advocates are estimates that the number of deaths attributable to medical malpractice is between 210,000 and 400,000. Please remember that the advocates of tort reform are actually advocates for special interests, not the public good. Keep that in mind when choosing your public officials at election time.

