

WORKER'S COMPENSATION EXAM
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This is a closed book exam. There are 40 questions. You will be given 2 HOURS to complete the exam. The test consists of six (6) pages. Please be sure you have all six pages and answer all 40 questions.

1. What do employees and employers each give up and receive as part of the workers' compensation compromise?
2. A property owner enters into a contract with a general contractor to build a law office. The general contractor enters into subcontracts with ABC Plumbing and 123 Roofing to work on the project. While building the law office, an employee of 123 Roofing drops a large stack of shingles from the roof and severely injures an employee of ABC Plumbing, who is working below. Is the general contractor legally obligated to pay any workers' compensation benefits that may be due to ABC Plumbing's employee as a result of the accident? Why or why not?
3. Based on the same facts as the previous question, is 123 Roofing considered to be a statutory employer of ABC Plumbing's injured employee? Why or why not?
4. When the two-contract doctrine does not apply, what are the two requirements for a statutory employer relationship to exist between a principal and a contractor's employees?
5. What is the one exception to exclusive remedy?
6. Paul, a mechanic, dies as a result of injuries that he sustained in a job accident when a large engine block fell on him. After the accident, a co-employee testifies that, although no engine had fallen previously, he repeatedly complained to the employer about frayed straps, rusted chains and the lack of a safety hatch on the engine hoisting equipment. Based on the co-employee's testimony, do Paul's dependents have a viable tort claim against the employer because of its failure to address the safety issues raised by the co-employee? Why or why not?
7. Define "eggshell employee" and explain how the concept of the eggshell employee applies to workers' compensation.
8. Define "presumption of causation"

9. Mary works in a bakery. While performing her normal duties during normal working hours, she has an epileptic seizure and falls. She injures her shoulder in the fall. Is Mary's shoulder injury compensable under the Louisiana Workers' Compensation Act? Why or why not?
10. Sam works as a supervisor in a lumber yard. As a supervisor, he typically works at a desk receiving orders on a computer and relaying those orders to employees to be filled. Because of a labor shortage, he is forced to perform heavy manual labor during the Christmas holidays. While performing the heavy manual labor, Sam has a heart attack. He has no prior history of heart-related problems. Is Sam's heart attack a compensable injury under the Louisiana Workers' Compensation Act? Why or why not?
11. Mary Ann's boss routinely berates her for poor performance. He even calls Mary Ann at home to complain about deficiencies in her work. After two years of employment under these conditions, Mary Ann goes to a psychiatrist and is diagnosed with depression. The psychiatrist relates Mary Ann's depression to the extreme stress caused by her working conditions. Is Mary Ann's depression a compensable work injury under the Louisiana Worker's Compensation Act? Why or why not?
12. Matt is a longtime employee of a construction company. He is fifty-six years old and has a history of chronic lower back pain attributed to longstanding degenerative disc disease. One day while at work performing work duties, he reaches to grab a tool, and he feels an immediate, sharp pain in his lower back. He has been unable to return to work ever since. Matt's doctor diagnoses Matt's condition as an aggravation of his longstanding degenerative disc disease. Is Matt entitled to workers' compensation benefits for his disabling back pain? Why or why not?
13. What two factors would allow an employee to carry the burden of proving an unwitnessed job accident?
14. Explain the difference between an accident and an occupational disease.
15. Buster Posey is a catcher for the San Francisco Giants. From years of squatting behind the plate, Buster develops arthritis in both knees. He plays through the pain for years, but the pain gets progressively worse until Buster cannot catch anymore. Is Buster's knee condition compensable under the Louisiana Workers' Compensation Act as an occupational disease? Why or why not?

16. Ray worked as a sandblaster for twenty (20) years at Avondale. He retired in 2012. Before he retired, he had begun experiencing occasional shortness of breath with a productive cough. His condition got progressively worse and became chronic in the ensuing years. On May 2, 2017, Ray saw a physician for the first time for his symptoms, and he was diagnosed with silicosis related to his previous work as a sandblaster. As of the date of this exam (December 15, 2017), is Ray's claim for workers' compensation benefits against Avondale prescribed? Why or why not?
17. Explain the difference between "arising out of employment" and "in the course of employment."
18. Dick is working for Halliburton and is provided with a company car. On a Sunday, the only day of the week that he does not work, he takes his wife and children to church in the company car. On the way to church, Dick has an automobile accident and is injured. Is Dick entitled to workers' compensation benefits for his injuries? Why or why not?
19. Ms. Robinson went to work during an ice storm and found a note on the door to the office indicating that the office would be closed for the day. After she left the building, she slipped on a patch of ice and injured her back while crossing a public street to get to the parking lot where her car was parked. Is Ms. Robertson entitled to workers' compensation benefits for her injury? Why or why not?
20. Kim and Chris are undergoing a bitter divorce. Chris is distraught at the termination of their marriage and he decides that, if cannot have Kim, he will kill her so that no one else can have her. Kim works at a convenience store. Chris sets up in the woods across the street from the convenience store and shoots Kim with a high-powered rifle while she is working. Kim survives the attack but is badly injured. Is she entitled to workers' compensation benefits from her employer? Why or why not?
21. Explain the difference between "positional risk" and "increased risk." In what circumstances do each of the two tests apply?
22. A supervisor tells an employee to move boxes. The employee complains that it is not his job. The supervisor insists that the employee move the boxes. The employee again refuses. During their argument, the supervisor makes a disparaging comment about the employee's mother. In response to that remark, the employee hits the supervisor. The supervisor retaliates mercilessly and severely injures the employee. What affirmative defense is the employer likely to raise in response to a claim by the employee for workers' compensation benefits? What two arguments could the employee raise to try to defeat the defense?

23. Joe is driving for ACME Trucking headed west on I-10. A driver headed east on I-10 suddenly loses control of his vehicle, crosses the median and hits Joe's truck. Joe is injured in the accident and is taken to the hospital, where a blood test reveals that he has blood alcohol level of .16, twice the legal limit. What affirmative defense is the employer likely to raise in response to a claim by Joe for workers' compensation benefits? Is the employer likely to prevail on that defense? Why or why not?
24. Bobby is recovering from back surgery at the L5-S1 level. His doctor releases him to return to work with a restriction of no lifting over 50 pounds. Bobby applies for a job at ABC Construction and informs his employer of the prior back surgery. Shortly after beginning his employment with ABC Construction, Bobby ignores his doctor's restrictions and knowingly attempts to lift a 150-pound package at work. When he attempts to lift the package, he re-injures his back and is diagnosed with a recurrent disc injury at L5-S1. What affirmative defense is the employer likely to raise in response to a claim by Bobby for workers' compensation benefits? Is the employer likely to prevail on that defense? Why or why not?
25. When does the 40-hour presumption apply?
26. Are "fringe benefits" such as vacation time and sick leave included in the calculation of the average weekly wage? Why or why not?
27. Identify and define the four types of disability benefits available under the Louisiana Workers' Compensation Act.
28. The employee's choice of physician reports that the employee requires surgery. The employer's choice of physician, however, reports that the employee will not benefit from surgery. Under the Louisiana Workers' Compensation Act, what procedure is available to the employer and the employee to try to resolve the dispute between two physicians?
29. Victor was injured in the course and scope of his employment as a heavy manual laborer. After Victor reaches maximum medical improvement from his job injury, his treating physician restricts Victor from performing his former job but releases him to perform light duty work. Based solely on the evidence presented above, is Victor entitled to additional workers' compensation disability benefits and, if so, what kind?
30. What are the two functions of vocational rehabilitation in a workers' compensation claims.
31. Tom submits ten claims for travel reimbursement, all of which the insurer does not pay timely. What is the maximum penalty that Tom can receive under the Worker's Compensation Act for the insurer's failure to pay the ten mileage submissions?

32. Larry claims that he was injured in an unwitnessed accident, but his employer denies his claim. Larry files a formal claim with the Office of Workers' Compensation seeking workers' compensation benefits for his injury. While litigating the claim, Larry receives unemployment benefits for 26 weeks at the rate of \$75.00 per week. One year after the accident, Larry successfully proves at trial that he had a job accident. The judge finds that Larry has been totally disabled since his job accident and that his workers' compensation rate is \$400.00 per week. How much worker's compensation does Larry's employer owe for each of the 26 weeks that Larry received unemployment benefits?
33. An insurance adjuster agrees in a phone conversation with a disabled employee to settle the employee's workers' compensation claim for \$5,000.00. As soon as the adjuster gets off the phone with the employee, the adjuster terminates the employee's weekly workers' compensation disability benefits and sends the employee a check for \$5,000.00 along with a letter confirming that the \$5,000.00 payment is in full and final settlement of any and all claims arising out of the employee's job accident. The employee blows through the \$5,000.00 quickly and, two months after agreeing to the settlement and accepting the \$5,000.00 payment, demands that the adjuster reinstate weekly workers' compensation disability benefits. Is the injured employee entitled to additional workers' compensation benefits? Why or why not?
34. Assume that an employee was injured on November 1, 2016, and that the employee's injury does not qualify as a developmental injury. As of today (December 15, 2017):
- (a) If no benefits of any kind have been paid as a result of the employee's injury, are the employee's claims for workers' compensation medical and disability benefits prescribed? Why or why not?
 - (b) If both disability and medical benefits were paid until December 1, 2017, are the employee's claims for additional workers' compensation medical and disability benefits prescribed? If not, what are the applicable prescriptive periods for additional disability and medical benefits under this scenario?
 - (c) If no disability benefits were paid but medical benefits were paid until December 1, 2017, are the employee's claims for disability benefits and additional medical benefits prescribed? Why or why not?
35. What is a developmental injury and how does a developmental injury affect an employee's workers' compensation claim or an employer's defense to that claim?
36. False statements or representations by an employee may result in forfeiture of workers' compensation benefits under La. R.S. 23:1208 or La. R.S. 23:1208.1. Explain the differences between La. R.S. 23:1208 and La. R.S. 23:1208.1.

37. Kim had a serious job accident, and she has been totally disabled and receiving worker's compensation benefits for several years since her accident. During the handling of the claim, the workers' compensation insurer realizes that Kim submitted more than 7,000 miles in mileage reimbursement claims, when her actual compensable travel was under 700 miles. Could Kim's inflated mileage submission be a violation of La. R.S. 23:1208 and, if so, how would Kim be penalized for that violation?
38. What is the definition of a "third person" under the Louisiana Workers' Compensation Act?
39. Jim injured his back in 2013 while working for ACME Construction. He was diagnosed with a herniated disc in his lumbar spine, and he had surgery to repair the disc. At the time of his 2013 accident, ACME Construction's workers' compensation insurer was State Farm. State Farm paid workers' compensation disability benefits and medical benefits until Jim returned to work for ACME in 2016.

Five months after Jim returned to work, he was involved in a motor vehicle accident while in the course and scope of his employment with ACME Construction. The driver that hit Jim, who was delivering pizza for Domino's, was texting at the time of the accident and ran through a red light. Jim aggravated his prior back injury in the motor vehicle accident. At the time of this second job accident, ACME Construction's workers' compensation insurer was LWCC. LWCC began paying disability and medical benefits on Jim's claim a week after his accident and continues to pay those benefits as of this date.

Identify any parties from whom LWCC may seek reimbursement of some or all of the workers' compensation benefits that it pays as a result of Jim's 2016 motor vehicle accident and state the basis for its right to reimbursement against each party. Briefly explain, based on the facts presented above, whether LWCC will be successful in its claims for reimbursement.

40. Joe works as a maintenance man for John Deere & Company. He is injured mowing grass at John Deere & Company's offices when the John Deere riding mower that he is using tips over. The accident is caused by a design defect in the John Deere mower.
- (a) Does Joe have a viable tort claim against John Deere & Company as the manufacturer of the defective mower? Why or why not?
- (b) Would the result be any different if, instead of mowing grass at John Deere's office while on the job, Joe is injured mowing the grass at his home when the John Deere riding mower that he bought from Lowe's tips over because of a design defect in the mower? Why or why not?