



Workers Compensation

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Workers Comp Basics

- Only alters obligations where there is an employee/employer relationship.
- Creates a trade-off
 - Workers get compensated for more injuries
 - Because demonstrating negligence (breach of the duty of care) is not necessary
 - Workers get lower compensation than the tort system might provide
 - And vice versa for employers: Pay for more accidents, but get immunity from bigger judgments
- Compared to torts: Duty and causation are replaced with requirement of an *accident* happening *in the course of and arising out of employment*.

The Trade Off

- Workers:
 - Get compensated for more injuries.
 - Because demonstrating negligence (breach of the duty of care) is not necessary
 - Get compensated more quickly.
 - Because they get benefits right away, as opposed to going through the litigation process.
 - But they get lower compensation than the tort system might provide for a given accident.
- And vice versa for employers. They:
 - Must pay for more accidents.
 - But get immunity from bigger judgments.
- Because of this trade off, in any given dispute, either the employer or the employee might be arguing for WC coverage.

Who counts as an employee?

- WC statutes provide their own definitions.
- Generally, an employee is distinguished from an independent contractor.
- An independent contractor tends to
 - Work with own tools
 - Direct her- or himself in details of working
 - Choose own hours
 - Do work outside the core competency of the hirer
- An employee tends to
 - Work with hirer's tools
 - Be controlled at work by boss
 - Work the exact hours hirer says
 - Work in the core competency of hirer

Who counts as an employee?

- WC statutes provide their own definitions.
- Generally, an employee is defined by an employer's control over the worker's activities.
- A worker is an employee if:
 - Works in the core competency of hirer
- All employees are covered by WC laws.

IMPORTANT: You can't contract out of employee status. The law cares about the substance of the relationship.

Exclusivity/preclusion/immunity

- Although often called “exclusivity” or “preclusion,” this is really employer immunity from their employees for accidents.
- Exceptions to immunity:
 - Genuine intentional wrongs. (Substantial certainty counts as intent in many courts.)
 - Reckless or wanton acts (in some courts).
 - Federal cause of action
 - Where a federal statute allows a cause of action, that can't be precluded by state law
 - Fraudulent concealment
 - E.g., if company doctors know of a worker's illness but don't inform the worker, a fraudulent concealment theory can allow a tort action for worsening of the condition caused thereby.

Exclusivity/preclusion/immunity

- **Dual Capacity:**
 - Where the employee is acting as the employer's customer, in some states immunity does not apply.
 - E.g., where the employer is a physician and the employee is a receptionist, where the physician is treating the receptionist, a med mal action might not be barred.
- **Third-Party Defendants**
 - Employees may or may not be barred from suing employer's contractors, suppliers, and other employees. This depends on the jurisdiction.
- **Third-Party Plaintiffs**
 - Spouses and children of workers are generally barred from wrongful death actions, loss-of-consortium claims, and survival claims against the worker's employer

Exclusivity/preclusion/immunity

- **Preclusion without recovery:**
 - It is possible, at least in some jurisdictions, for a worker to suffer an accident for which compensation will not be awarded, but where tort-preclusion applies.
 - For instance, if a factory worker suffers an accident that causes disfiguring burns which are aesthetic in nature, but which do not affect the worker's ability to work, the worker may have not be entitled to any compensation but may be barred from filing a tort action.

Requirements for obtaining benefits

1. There was a personal injury
2. Resulting from an accident
3. That occurred during the course of employment
4. And arose out of employment

Personal injury

Requirements
for benefits

- Physical cause, physical effect
 - Always considered a personal injury
- Physical cause, mental effect
 - Vast majority of jurisdictions consider this a qualifying personal injury
- Mental cause, physical effect
 - Majority consider this a qualifying personal injury.
- Mental cause, mental effect
 - Most courts do not consider this a qualifying personal injury.

Resulting from an accident

- This requirement is sometimes used to exclude health problems accumulated from long-term exposure

Course of employment

- Recurrent course-of-employment problems
 - Employer-provided recreational activities
 - Horseplay at work
 - Commuting and travel

Arising out of employment

- This requirement excludes for instance, a heart attack suffered while at work, where nothing about work caused the heart attack.
- Some situations that differ among jurisdictions or are litigated can include an auto accident endured while driving to a meeting, being hit by lightning while at work.

Benefits

- Medical and rehabilitation benefits
- Cash payments for disability and death
- Disability may be permanent or temporary, total or partial.
- Some states use a schedule to determine payments for permanent disabilities.

Review Problem

Elmer operates a dragline—a large machine that digs ditches—for the Great Lakes & Minniana Railway. One day a cable snaps and Elmer’s arm is badly broken. The dragline that GL&M Railway was operating was the safest dragline on the market, and they had taken pains to make sure the dragline had undergone regular maintenance. Assuming Elmer cannot show that the GL&M Railway has been negligent, can he still recover workers’ compensation benefits?

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YES—Unlike tort liability, there is no negligence requirement for workers’ comp. As long as the injury occurred in the course of, and arising out of, employment, then workers’ compensation is available.

Review Problem

Elmer later discovers that the GL&M Railway failed to replace the dragline cables as recommended by the manufacturer. Can Elmer prevail in a tort suit against the railroad?

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NO—Workers' compensation regimes generally preclude tort suits by employees against their employer.

Review Problem

Joey works at Old Banana, a clothing store in the mall. The music played over the PA system in Old Banana is on a tape loop that repeats every 30 minutes. After hearing “Day-O” for the 43rd time over a busy Labor Day weekend, Joey has a mental breakdown. After the episode, he bursts into tears every time he sees neatly folded clothing. Subsequently, Joey is unable to work for the next two weeks. Is he entitled to workers’ comp benefits?

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PROBABLY NOT—While states differ, so-called “mental-mental” injuries, where there is no accompanying physical cause or effect, are not usually compensable.

Review Problem

When Joey returns to work at Old Banana, the tape is different, but it still repeats every half-hour. Over the course of three days, Joey hears “Lady in Red” 73 times. On hearing it the 73rd time, he runs screaming to the back of the store and slams his head in one of the fitting-room doors upwards of 30 times. Is treatment for Joey’s subsequent concussion covered by workers’ comp?

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PROBABLY—A “mental-physical” injury such as this is compensable in most jurisdictions.

Review Problem

Mario, the proprietor of the Ziff Cafe, is sick and tired of Ricardo, his chief chef. So late one night Mario takes out a hammer and cracks the hose fitting for the gas supply to the range. When Ricardo comes into work the next day, he goes to ignite the range and is badly burned in a fireball caused by the escaped gas. Can Ricardo sue the Ziff Cafe and Mario in tort?

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YES—Workers' comp preclusion of tort suits does not operate where the injury was the result of an intentional wrong. In some states, recklessness or wantonness will suffice.

Review Problem

Traci is a waitress at the Ziff Cafe. After work she meets her boyfriend to have drinks at the bar. She badly cuts her lip on a broken glass. Can Traci sue the Ziff Cafe in tort?

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YES—Traci is not at the Ziff Cafe in her employee capacity. Instead, she is a customer, and she can sue just as any other customer could.