

WHAT CONSTITUTES A WORK ACCIDENT?

BY BRENDA S. SPILKER



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Are you confused by the world of work-related injuries? Is workers' compensation a four letter word in your vocabulary? Are you overwhelmed by the thought of what to do if an employee complains of pain or symptoms? Baylor Evnen recently hosted a workers' compensation seminar for its clients. For the first time, a "Work Comp 101" pre-session was offered to address more general and basic concepts of work-related accidents and the benefits associated with such an injury. This is the first in a series of articles that will focus on workers' compensation claims. In this article, you will learn the type of events that rise to a compensable claim in Nebraska.

Accident

The most recognized event for which benefits are awarded is a traumatic incident which occurs instantaneously and with force. Traditional accidents include the standard slip, trip and fall. Generally, the employee must have expert medical testimony to support that the work event caused the injury.

Occupational Disease

To be compensable, an occupational disease must be a condition which is characteristic of and peculiar to a particular trade, occupation, process or employment. Generally, diseases of life to which the general public is exposed will not be considered an occupational disease. Some examples of compensable conditions include asbestosis caused by exposure to asbestos, reactive airways dysfunction syndrome caused by exposure to "hog dust," and occupational asthma and contact dermatitis caused by exposure to chemicals and compounds. Factors which are relevant to the determination of whether an employee suffers from an occupational disease include how and when the exposure took place and other possible natural cause factors such as dust, smoking and family history for similar diseases.

Repetitive Trauma

A compensable injury can occur from activities which create a series of repeated traumas, ultimately producing disability. Injuries which may fit within this category include carpal tunnel syndrome, tendinitis and back problems. The employee must be able to identify when the symptoms began. After the onset of symptoms, the employee must both seek medical treatment and have a discontinuance of employment within a reasonably limited period of time. Missing all or a portion of a work day to see a

medical provider is sufficient to constitute a discontinuance of employment. So too is having to modify the manner in which the job is performed, or changing to a lighter or different job. Whether an injury is deemed to be work related in large part depends upon whether a doctor provides a causation opinion linking the injury to the work duties.

Aggravations

Awarding of workers' compensation benefits to an employee who has a pre-existing medical condition or problem is likely the most difficult type of accident for the general public to understand. A worker with degenerative disc disease, for example, may still be entitled to workers' compensation benefits if the pre-existing condition combines with a work-related incident to produce additional disability. Often an underlying degenerative condition is not symptomatic until the employee has to perform repetitive work activities, or experiences a traumatic event, causing symptoms to develop and requiring the need for medical treatment. Even if a pre-existing condition is symptomatic, the employee may be entitled to workers' compensation benefits if a work event or repetitive trauma accelerates or inflames the underlying condition. Some examples of an aggravation of a pre-existing condition include causing the employee to undergo surgery sooner than he otherwise would have, or causing new or different symptoms to develop. An aggravation of a pre-existing condition is distinguishable from the natural progression of a pre-existing condition, which is not compensable. When assessing an aggravation claim, one needs to ascertain the nature and symptoms associated with the pre-existing condition and then compare those symptoms with those which follow the work-related event.

Emotional/Psychological

Psychiatric problems or depression may be compensable if they are a product of a physical work-related injury. However, mental stress at work which produces a mental or physical injury is not compensable.

Conclusion

The best rule to follow when an employee approaches you with symptoms or complaints is not to ignore them. As the employer, you have a duty to investigate the complaints to determine if they may be work related.

REVISED EEO REPORTING FOR LARGE EMPLOYERS

BY GAIL S. PERRY



Gail S. Perry

The EEOC recently finalized the first changes in 40 years to the EEO-1, or Employer Information Report. These revisions, affecting job, race, and ethnicity categories, will go into effect with the report due on September 30, 2007.

Since 1966, the Equal Opportunity Commission (EEOC) has required large employers* to annually submit an EEO-1, or Employer Information Report, in which employers provide anonymous data about the number of women and minorities in broad occupational categories. The EEOC uses this data to analyze employment patterns and support civil rights enforcement.

Changes Made to Ethnicity and Race Categories

In light of the revised government-wide standards for reporting race and ethnicity, the EEOC has made several changes to the race and ethnicity categories of the EEO-1 report:

- A category has been added titled "Two or more races"
- The EEO-1 report now divides "Asian or Pacific Islanders" into two separate categories: "Asian" and "Native Hawaiian or other Pacific Islander"
- The report renames "Black" as "Black or African American"
- The report renames "Hispanic" as "Hispanic or Latino"

Also, in order to further the EEOC's goal of understanding race in America, employers must now allow employees to self-identify their own race and ethnicity, as opposed to visual identification by employers. With regard to the "two or more races" category, employers are not required to report the different races, but must report data about the number of employees who identify with "two or more races." Lastly, the revised EEO-1 report requires employers to utilize a "Two Question Format" by asking employees separate questions about ethnicity and race.

For example, the employer should first ask if an employee is Hispanic or Latino (ethnicity), and second ask what race the employee considers himself to be. This requirement is intended to yield a more accurate count of Hispanics and Latinos.

Changes Made to Job Categories

The EEO-1 report now divides the job category of "Officials and Managers" into two levels based upon responsibility and influence within the organization: "Executive/Senior Level Officials and Managers," and "First/Mid-Level Officials and Managers." The revised EEO-1 report also moves business and financial occupations from the "Officials and Managers" category to the "Professionals" category.

The updated Job Classification Guide is posted at <http://www.eeoc.gov/eo1/jobclassguide.html>.

Filing an EEO-1 Report in 2007

Employers must use the revised EEO-1 report for the report due on September 30, 2007. The report may be submitted through the EEO-1 Online Filing System. Employers may use employment figures from any one pay period between July and September of the survey year in question. Thus, the EEO-1 report due on September 30, 2007, must be based on employment figures from one period between July and September of 2007. The EEOC will not require employers to resurvey employees for the September 30, 2007, EEO-1 report. Employers are, however, encouraged to resurvey their current employees using the new race and ethnic categories.

**Excludes governmental entities, Indian tribes and tax-exempt private membership clubs.*

Q & A

Q: Some of our managers are not physically present when supervising the activities of their subordinates. Do they qualify for the executive exemption from overtime pay even if they do not supervise their subordinates in person?

A: To qualify for the executive exemption from overtime pay under the Fair Labor Standards Act, a manager must customarily and regularly direct the work of two or more full-time employees or their equivalent. "Customarily and regularly" is defined as a frequency that must be greater than occasional, but may be less than constant. The Department of Labor has ruled that a manager does not have to work at the same time or in the same establishment as her subordinates in order to customarily and regularly direct their work. The important factors are whether the manager is maintaining responsibility for compliance to company policies, following up on assigned tasks, monitoring and appraising employee efficiency and productivity, and disciplining employees. Thus, a manager who does not supervise her employees in person may nevertheless qualify for the executive exemption, provided she customarily and regularly directs the work of two or more full-time employees or their equivalent.



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