Comp Claims for Off-the-Job Accidents

by Quenda Behler Story

Most contractors know that an employee who is injured on the job or in the course of employment is entitled to workers compensation benefits. Often, the circumstances of the injury are straightforward — a carpenter gashes her hand on a piece of rebar or trips over some scrap lumber on the deck and breaks her ankle — but sometimes it's questionable whether or not the employee was "on the job." Often, the circumstances determine how the law is applied.

Most contractors appreciate the protection workers comp insurance provides, but they also complain about high premiums. Since those premiums fluctuate depending on a company's claims record, it's important to keep injuries to a minimum. As the following examples show, however, accidents can happen in surprising places.

Lunch on Site

Suppose the employee is on the job site getting ready to eat lunch while sitting on the temporary steps to the second floor. As he sits down, he knocks his thermos bottle over and while lunging to grab it, he slips off the steps, falls to the deck, and breaks his arm.

This employee is not working, he's eating lunch; theoretically, he's on his own time. He's not required to eat lunch at the site — he could have gone out to a diner to eat — so is he entitled to workers comp benefits for his injury?

As a general rule, workers who are injured while eating on the job site during the work day are entitled to compensation. Even though they are not actually working, they are available to their employers if they're needed. The same is true of a morning and afternoon break.

Social activities. Now let's look at slightly different circumstances. Suppose this employee and his co-workers were sitting around the job site jawboning after the work day was finished when a similar accident occurred. In this case, the injury happened during "recreational" or "social activities," which don't fall under workers compensation benefits, even when they take place on the job site.

Suppose, however, that the employer is sitting around with them, and they're all discussing the progress of the work, or maybe planning tomorrow's work. Now the injury is probably work-related.

Company Vehicle

Let's revisit the lunchtime scenario. This time, imagine that an employee left the site to drive to a diner for lunch. While pulling into the parking lot, she was hit by another car and injured. In this case, the employee is probably not entitled to workers comp, because she was not available to her employer during lunch and she was driving her own truck. She probably couldn't get workers comp benefits.

But if she were driving a company vehicle with the company name on it, she probably could get benefits. The reasoning is that while driving in a truck with the company name on it, she was advertising her employer's company.

Commuting to work. Similarly, employees who are injured driving to and from work are not considered to be on the job, and are usually not covered by workers comp. There's a lot of wiggle room here, though. If the employee is in a truck with the employer's name on it, that's a benefit to the employer; any injury will fall into the work-related category.

Suppose the employee had intended to stop and pick up materials for the job site on his way into work. Instead, he is injured in a car accident while driving his own truck without any company logo. Running that errand is — or would have been — a benefit to his employer, so his injury also falls into the work-related category.

Company Party

Let's see if we can muddy the waters a little more. This time, the scene is the company's annual Christmas party, which is held in the local VFW hall. That's not a job site and the employees are not working, so as a general rule, injuries that occur during the party there would not be covered by workers compensation.

Let's suppose, however, that the Christmas party is the occasion at which the employer passes out bonuses and awards, and invites the company's customers in to meet the gang. Attendance at the party isn't exactly mandatory, but the employer does encourage attendance. An injury at that party is likely to be covered by workers compensation benefits.

Employee Misconduct

Here's one that will make you think: The black-letter law is that injuries caused by "intentional and willful misconduct" are excluded from workers compensation. In other words, if a fight

breaks out between two employees, even on the job site, any injuries will usually not be compensated.

Suppose, however, that those employees were just goofing around, doing a little pushing and shoving. Now the activity falls into the category of "general horseplay on the job," and an injured employee is entitled to workers compensation benefits for any injury.

Negligence

It's important to remember that an injured worker who doesn't qualify for workers compensation may be entitled to some other kind of compensation. In fact, in some cases, it's the employer who insists the worker get workers compensation benefits. That's because a worker whose injury is covered by his employer's workers comp cannot sue his employer for negligence, even when the employer was negligent. (There is a big exception involving gross negligence, but we aren't going to worry about that in this column.)

Take the guy sitting on the temporary steps eating his lunch. If it were not a worker-employee situation and he fell because those steps were negligently maintained, he could sue for a lot more than workers comp benefits, which are limited to a portion of lost wages and medical costs. In a negligence lawsuit, the sky's the limit, so the injured worker could ask for damages for things like his emotional suffering and his wife's loss of consortium.

However, even a worker who receives workers compensation can sue for negligence — he just can't sue his employer. For example, an employee driving a company truck who gets hit on the way to the lumberyard gets workers compensation, plus he gets to sue the other driver, too. However, if he wins the lawsuit against the motorist who caused the accident, his employer is entitled to reimbursement for the workers comp benefits that have been paid.

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