

WC: Who Cares?

Workers' Compensation: What You Need to Know



When most people hear “workers’ compensation,” they often think it’s a one-time injury with a specific point of origin—an accident at work—but according to Alex Wallach, a claimant’s attorney with a practice in Forest Park, Ga., repetitive motion injuries can be the basis for a worker’s comp claim in most states.

“All workers comp is no-fault. The test is generally, did the injury arise out of and during the course of the employment. In other words, was the person doing his job when he got hurt? Generally speaking, if the answer is ‘yes’ it doesn’t matter if the person did something [that caused the injury] or the employer put them in a dangerous situation,” Wallach said.

In some states, he explained, just how much an injured worker may receive in compensation benefits may be determined by how much of the injury was caused by the employee’s own actions.

At Issue

Just because an employee gets hurt on the job doesn’t mean everyone needs to lawyer up. In some cases, it’s a cut-and-dry case and the employer will make sure the injured worker is compensated accordingly until he (or she) is able to return to work.

“If someone drops a windshield and takes off three toes, he’s been there a long time and he’s not on drugs, it may be a no-brainer and of course they’ll pay for it. Of course, if it’s a lifting accident for someone who’s only worked there for a couple of days and has no history with the company, the employer may want more proof of it being a work-related injury,” said Wallach, a partner with George and Wallach, a law firm that handles social security and workers’ compensation cases just south of Atlanta.

It’s when an employer suspects the injury may not have actually happened on the job, calls into question the employee’s story about the injury or is hesitant (or sometimes down right refuses) to pay compensation that things get fairly involved.

“It could involve court appearances, depositions, tracking down documents such as a guy’s wages for a period of time before he got hurt. On the other hand, it could involve none of those if the employer doesn’t dispute that the guy gets hurt. If they don’t dispute it, it won’t matter,” Wallach added.

What it boils down to is whether or not the employer is going to say there’s reason to believe the injury was not an on-the-job injury.

“If they say [an employee] got injured skiing over the weekend, that’s a defense. If they say he got injured because he was doing something stupid and it got him injured, that’s not a defense,” Wallach said.

Great Expectations

In workers’ compensation cases, whether contested or not, the effect on the claimant can be significant.

“First of all, they’re experiencing pain and their life is changing. They’re likely to experience a period of disability and different stresses for themselves and their family that they’re not used to experiencing. Their income is likely to come down. The workers’ comp system is designed so they won’t get full pay, no matter how much they were making,” said Wallach, who has been representing injured workers in Georgia for more than 20 years.

In Georgia, for example, workers injured after July 1, 2007, can collect no more than 500 a week. Adding to the pressures a family with an injured worker can face is a system that in some ways can be rather outdated. The first state to institute workers’ compensation laws was New York in 1920 and the last was Mississippi in 1948. Further, injured workers are subject to state laws, as the last attempt to make the workers’ compensation system a federal entity was more than 30 years ago.

“It’s a system designed primarily with 19th or early 20th century modes of work in mind. This creates tensions because in our workplace today is vastly different from what it was 100 years ago,” he continued.

The differences are numerous, including

the actual physical labor, what’s covered.

“In some cases, the law has not taken into considerations on how people parent or co-parent—the fact that workers may have children at home for which a spouse is the primary care taker until the [working partner] gets hurt; there’s no compensation for getting child care when the primary care giver has to enter the workforce,” Wallach said.

With that in mind, no one involved in a workers’ comp case should labor under the illusion that the injured employee will walk away independently wealthy.

“If a guy got hurt in an auto accident, he can sue for punitive damages or whatever the jury will give him. That’s not what happens in a worker’s comp case. It’s a very narrow remedy. We’re not going to worry about whose fault it is, we’re going to compensate people who got hurt on the job. End of story. The trade-off is, it’s not a good benefit. It would be the rare employer who was better off having someone sue him than just having a workers comp claim,” Wallach said.

Face the Music

Worker’s comp claims happen and even the best employer can’t always avoid them.

“If someone so much as whispers the words worker’s comp, they should put their insurance company on notice and tell them about it. Let the insurance company handle it. What they should not do is just kind of say ‘oh, it’s not real’ and not report it. That could prejudice the insurance company rights and make it harder to defend,” Wallach said. “One of the big things is [employers] don’t try to make your own decisions whether a claim is dispensable or not. Turn it over to the insurance company. In worker’s compensation, generically and generally, the interests of the employer and the insurance company are aligned, not divergent.”

Workers’ Compensation laws vary by state. Check with an attorney in your area for more information on your rights and obligations.