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This Just In...

Court rules lunch break injury is compensable.

The Maine Supreme Court recently ruled that an employee who slipped and fell on icy steps while returning from a lunch break could receive workers' compensation. The company argued that the injury fell under the "coming and going" rule, but the court deemed the injury work-related, because it occurred at the entry of a building where employees reported to work. This case reminds employers of the importance of mitigating conditions that may affect employees' safe coming and going on the employer's property.

In California, two men stole workers' comp claimants' identities

to obtain fraudulent payments of about \$260,000 for medical billings. The men were charged with conspiracy, grand theft and other crimes. Investigators are trying to determine how the defendants obtained the identities of the workers' comp claimants. Total fraudulent payouts could reach \$3 million. This case reminds employers to review electronic security measures and record-retention policies to protect medical records, health and workers' compensation claim files, and other sensitive electronic records from unauthorized access.



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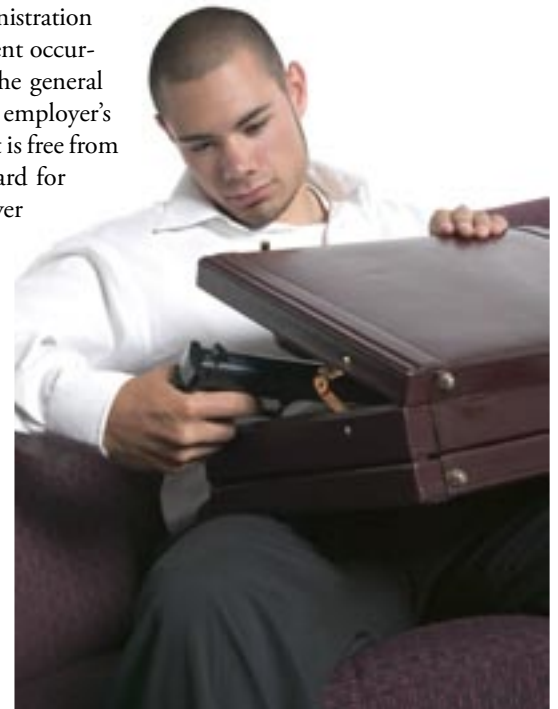
SAFETY

Workplace Violence

Although the number of workplace homicides dropped sharply between 2003 and 2004, homicide tied with falls as the third leading cause of workplace fatality in 2004. During the same period, workplace injury due to assaults and violent acts by other persons increased by almost 7 percent.

The Occupational Safety & Health Administration (OSHA) can cite an employer for an event occurring due to workplace violence under the general duty clause, which states that it is the employer's responsibility to provide a workplace that is free from recognized hazards. If a recognized hazard for workplace violence exists and the employer has created no policy, practice or action to correct it, the employer can be cited and fined. OSHA suggests that employers' workplace violence policies indicate zero tolerance for all forms of violence from all sources.

What exactly is workplace violence? The National Institute on Safety & Health (NIOSH) defines workplace violence as, "Violent acts (including physical assaults and threats of assaults) directed toward persons at work or on duty." Workplace violence occurs in all industries, but it is a major source of concern in the healthcare and social service industries. Though fatal assaults have occurred, the majority of reported injuries in these professions stem from non-fatal assaults by patients or family members.



Whether workers' compensation covers a workplace violence event depends on the circumstances. For example, it might not cover a worker assaulted by a co-worker if the altercation resulted from personal, off-the-job activities. A co-worker caught in the cross-fire of this event, however, might receive workers' compensation benefits because the injury occurred at work. Benefit eligibility can vary quite a bit depending on results of your investigation, so conduct as thorough an investigation as possible immediately after the injury. However, after an injury, your first priorities are its reporting and treatment, so you might have to wait and sort out details later.

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Return-to-Work Programs Speed Recovery and Save Money

When an employee is injured on the job, the employer can respond in a couple of ways: The employer can allow the employee to remain out of work until fully recovered from the injury or the employer can provide a change of duties (restricted, transitional or light – which mean the same thing) that allows the employee to return to work sooner.

Choosing the first option will guarantee lost-time injuries. It will no doubt drive your modification rate higher; it will increase your company's injury-cost history and will directly increase your insurance premium.

In addition to these costs, your indirect costs will increase as well. These include overtime and increased responsibilities for remaining employees; additional costs related to therapy, rehabilitation services and other medical expenses; and an increased likelihood of your at-home injured employee feeling the need to hire an attorney while staying home for as long as possible on your dime.

Choosing the second option—a return-to-work program—will reduce your direct and indirect costs while also helping your employee experience a faster, more stable recovery. How can a return-to-work program do that?

- ☀ Studies have proved that getting an injured employee back to a more normal routine provides for faster recovery and healing time, reducing costs for rehab and follow-up physician visits.
- ☀ An employee returning to work before the benefit waiting period is up ensures a quicker return to full salary, reducing the risk of lawsuits and disgruntled attitudes.
- ☀ An employee returning to work provides less stress for family, along with co-workers and managers juggling overtime requirements, reducing the risk of workplace violence and morale problems.



The importance of communications

If you have a return-to-work program at your site, do your employees and managers know about it? The first step to an effective return-to-work program is a written and well-communicated policy. This does not need to be complicated; a simple statement that you have such a program communicates to your employees that early return-to-work is an employer policy and is applied consistently throughout the company.

Communicating your return-to-work program helps ensure its success. Explain to employees and managers that under a return-to-work program, an occupational medicine physician will prescribe limitations as necessary to ensure work and home activities will not compromise the employee's healing process. If employees understand this before being injured, they have fewer adverse emotions, fewer thoughts about

the company taking advantage of them, and less likelihood to feel an attorney is necessary.

Supervisors and managers also need to know what is expected of them and how they can contribute to the injured employee's successful return to work. A formal program will also open communication lines with the treating physician(s) so s/he knows that restricted work is available for the employee and s/he can prescribe the right treatment for the quickest recovery possible.

The workers' compensation process is all about good communications – among the employee, the manager, the physician, and the insurance carrier. Sample return-to-work policies are available from various sources. Contact us with any questions or for more information on how this type of program will benefit you and your employees. ☐

How can a return-to-work program reduce costs?

- ☀ decreases insurance overhead
- ☀ decreases hiring/job-training costs
- ☀ reduces use of nonessential medical treatments
- ☀ reduces lost-time rates and modification rates
- ☀ reduces frequency of lost-time claims
- ☀ reduces red flags to OSHA, reducing potential for audits or inspections
- ☀ reduces litigation costs
- ☀ reduces fraud and abuse by employees
- ☀ maintains production, workflow and quality standards
- ☀ improves morale and self-esteem of employees
- ☀ stabilizes work and production expenses

WORKERS' COMP

Note: This new feature will appear regularly to provide direction for those new to the workers' compensation field and a review of the basic principles for experienced professionals.

The Basics: What Is Workers' Comp?

Though each state has its own requirements, both manager and employee must understand certain fundamentals to avoid confusion or mismanagement of a workplace injury.

First, workers' compensation was formed in the early 1900s as a "no-fault" system to assist workers with medical expenses resulting from work-related injuries, whether due to the employee or the employer's error. Most states require employers with one or more employees to provide workers' compensation; most make coverage optional for partners and sole proprietors. All states except Texas require employers to meet their workers' compensation obligations by buying an insurance policy or by meeting the state's self-insurance requirements.

Second, workers' compensation claims and benefits are prescribed by state law. Policies do not vary by insurer and are not open to interpretation or changes by the insurer or employer. Employees and managers who understand this realize that certain criteria apply to work-related injury claims, including how much money may be paid for a disabling injury. That immediately lowers the risk of employees feeling like they need an attorney, since the law prescribes the benefits they can receive.

The employer must report any work-related injury that might require medical attention to the state's workers' compensation agency within a certain time frame. This ensures that the insurer and state's workers' compensation agency know any costs incurred for medical treatment and that they will be covered in a timely manner. This makes it critical for the employee to report any injury promptly.


An employee who needs medical attention for a work-related injury must obtain an authorization form from the employer to give to the medical facility. This ensures that the company knows a work-related injury has occurred, that the employee knows treatment and any follow-up medical visits are covered, and that the medical facility knows it will need to follow prescribed guidelines as well as whom to bill for the services rendered.

Not a blank check

Another key point to communicate is that workers' compensation benefits are not intended to replace income so an employee can stay at home indefinitely. They also might not cover some injuries that happen at work but are general in nature.

Examples of this are falling down stairs, insect stings or bites, bending over to pick something up – things that can happen away from work as well as at work. The injury may or may not be work-specific and, therefore, may or may not be covered under the workers' compensation policy. An insurer will interpret these types of injuries on a case-by-case basis, so be sure to report any injury sustained in the workplace, whether you think it will be covered or not.

Here is an interesting example of one of those "gray area" claims. An employee left his assigned work area and began "experimenting" with a chemical in another department. He was not trained, instructed or required to work with the chemical, but curiosity caused him to mix it with water, which led to an explosion that caused chemical burns to the employee's face, chest, arms and legs.

Did workers' compensation apply or not? The answer and the remainder of this article will appear in our October 2006 issue. 

This article is adapted, with permission, from an article that appeared in Occupational Hazards magazine, Dec. 2002.

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Responding to threatened or actual violence

Certain behaviors can indicate the potential for violence. These include

- ☀ actual physical assault, verbal threat to assault or stalking an employee or customer;
- ☀ possessing or threatening with a weapon;
- ☀ intentionally damaging company property or personal property of another;
- ☀ aggressive or hostile behavior that creates a reasonable fear of injury to another person;
- ☀ harassing or intimidating statements, phone calls, voice mails or e-mail messages, or those that the receiver deems offensive or unwanted;
- ☀ racial or cultural epithets or other derogatory remarks associated with hate crime threats.

As a manager, you are responsible for the safety and well-being of your employees and therefore must respond if you witness or are given notice of these problem activities. Appropriate intervention can prevent the

situation from escalating. If suspected violent or threatening activity comes from an employee, follow procedures outlined in your company's harassment, work interruption and performance management policies. Take any necessary corrective action, which may include termination.

As in any other type of emergency, make sure employees know how to respond or know when and how to contact emergency or law enforcement personnel. If you or your employees are unsure what to do, consider implementing a violence awareness training program for you and your staff. If you need help locating or scheduling this type of training, contact us for assistance.

Preventing workplace violence

Having and communicating the appropriate policies can help prevent violence by giving employees notice of what kinds of behaviors to avoid and what kinds of behaviors to look for in others. For example, do you have a policy related to weapons on the premises? Do you have a drug and alcohol or substance abuse policy for dealing with employees who are impaired or under the influence at work? Do you have random or involuntary search requirements of lockers, bags or even vehicles enter-

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Performing Safely— What are the Odds?

Have you ever purchased a lottery ticket for the 3-, 4-, 5- or 6-number drawing? How about when the pot becomes exceptionally large—does that get your interest? Do you know that your odds of winning do not change based on the number of tickets purchased? When you choose your numbers, it doesn't matter how many other people have also purchased tickets for the drawing. You are playing the odds based on your number selection, not based on the number of players participating.

Not long ago, there was a big game jackpot of \$145+ million dollars. Statisticians claimed that there was a 1 in 80 million chance of one person selecting all of the right numbers. They described it this way: A 1:80,000,000 odds of winning would be equal to a person walking out of the house on a clear, sunny day and being struck by lightning, then being struck by lightning again while standing in the same place.

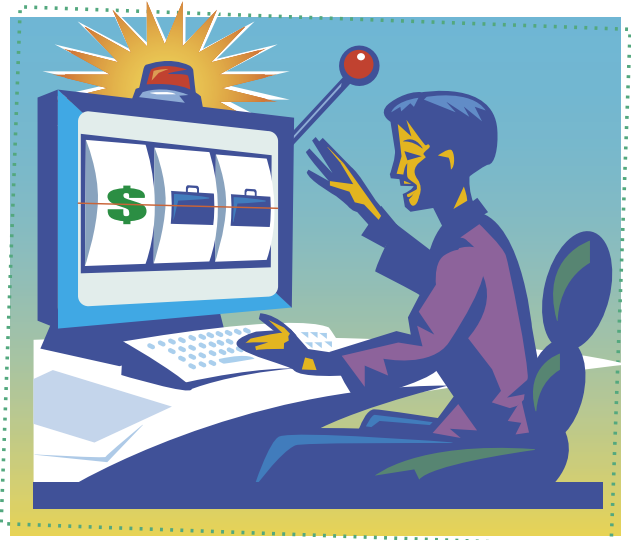
Could that really happen? Those are pretty slim odds. But as slim as the odds were, there were four (not just one) who chose all of the correct numbers for that drawing to split the pot four ways. Statistically, what are those odds? Four people hitting all the numbers for the same pot that took months to accumulate with no winner at all! The fact, though, is that it happened!

What are an employees' odds of getting injured when they don't wear the correct protective equipment to perform a task? What are their odds of getting injured when they skip a step in the procedures to save time or because you believe that step just isn't significant enough to worry about doing it? What are the odds?

Well, as highly unlikely as it was for one person, let alone four at the same time, to hit the jackpot, it happened. People are injured every day because they play the odds and lose. What are the odds of an employee going blind because you look the other way when he doesn't wear a face shield? What are the odds of a fuel cylinder exploding because someone didn't bleed the

regulator when they were through using it?

Since there are living (and dead) examples of people losing the odds, the better question is, "Is the value of my co-workers' lives so little as to make it OK to play the odds?" It only takes one split second. Don't risk compromising your employees' safety, quality of life or life itself to play the odds. Don't let them take the shortcut or skip the step in the procedure. Don't ignore the use of personal



The Odds of Dying

What are your odds of death by a particular event? The following statistics (2003) from the National Safety Council (www.nsc.org) show the odds of dying within a lifetime from certain selected causes.

| | |
|--|-----------|
| Deaths from unintentional injuries | 1:34 |
| Death from transport accident | 1:78 |
| Falls..... | 1:218 |
| Exposure to smoke, fire, flames | 1:1,113 |
| Fall from ladder or scaffolding..... | 1:8,112 |
| Accidental drowning | 1:1,134 |
| Contact with machinery..... | 1:5,856 |
| Struck by or against an object..... | 1:4,633 |
| Accidental threats to breathing..... | 1:672 |
| Accidental poisoning | 1:193 |
| Alcohol..... | 1:10,048 |
| Assault by firearm..... | 1:314 |
| Gases and vapors | 1:5,432 |
| Confined space with low oxygen .. | 1:234,254 |
| Accidental suffocation in bed..... | 1:7,541 |

Many of these statistics indicate the odds of dying from external factors that you have no control over. But when you are at work, you can greatly improve the odds for life by taking control of the work environment and ensuring employees perform the job the right way every time! Beat the odds – make the right choices when it comes to being safe at work and at home.

protective equipment. Don't risk life to play the odds. The end result is not the same as winning \$145 million. What are the odds? Well, they play out everyday. Is a life worth playing them?

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ing the property? Have you taken appropriate security measures for your employee parking area(s) and for restricting visitor access or entry into the work environment?

Pre-employment screenings, such as background checks, can eliminate some potential problem employees. An employee assistance program can also help your employees and their families deal with off-the-job stressors that can trigger violent behaviors in vulnerable individuals.

One very important key to preventing violence is maintaining open communication with employees. Don't surprise them with sudden announcements of layoffs, benefits reductions, sudden changes in overtime or shift schedules or other information that could create undue hardship or stress. These actions may be a necessary part of business, but keeping communication open and avoiding sudden surprises can minimize the frustration and anger that can lead to violence in certain people.

Preparing for this type of emergency is as important as preparing for a medical or other type of emergency. Evaluate your workplace and your policies to ensure that they will reduce the potential for violence and help you respond appropriately if a violent incident occurs at your workplace.



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