Course and Scope of Employment –
Is it Really a Workers’ Compensation Injury?

Workers’ compensation statutes differ among jurisdictions regarding the threshold for compulsory participation, benefit schedules, contractor/sub-contractor relationships and most other statutory specifics. But there is one workers’ compensation concept on which every state agrees and to which every state subscribes; to be compensable, injury or illness must arise out of and in the course and scope of employment.

With difficulties in the economy, we often find ourselves faced with increases in claimed work-related injuries. Be diligent in your accident investigation process in order to determine if the injury really was in the course and scope of employment. If you consistently ask what happened, how it happened and get witness statements to the occurrence, a tone of accountability will be set. One resort recently reported how a lift operator’s story about his accident just didn’t add up ….. the supervisor interviewed a couple of co-workers and emphasized that she didn’t want stories, she was only interested in the truth, which she got from 5 different witnesses. …….. the injured worker was then re-interviewed by the HR Director to give him a chance to come forward with the truth - with a reminder that filing a fraudulent claim is a felony. He confessed that when he and his coworkers were bored (working at a remote lift), they’d cover for each other and go off a jump they’d built near the lift. He was injured going off the jump. Did he get injured on duty? Yes. Was it in the course and scope of his job? No. Is it a compensable workers compensation claim? No.

There has been more than the usual number of reported injuries where it is not clear whether the employee was actually on the job or free-skiing. Be prudent in protecting your company and fair to your employees by clearly outlining your company policy and the procedures relative to this issue in the employee handbook. You may want to consider also having this policy in the departmental policies and procedures, especially lift ops and ski school. If you don’t define what is in the course and scope of the job, a workers comp judge will – and most likely his/her decision will be skewed in favor of the employee.

Three Tests

“Arising out of…” indicates a causal connection between the furtherance of the employer’s business and the injury. If the employer benefits in some way from the activity, then the injury or illness suffered in the pursuit of that activity is considered to “arise out of” the employment.

“In the course…” is a function of the timing and location of the injury or illness. The implication is that the injury must occur during operations for the employer, or “during employment,” and at the employer’s location or a location mandated or reasonably expected by the employer. New working conditions and relationships do not necessarily limit this to an on-site, 8-to-5 exposure.

“Scope of employment…” serves to more specifically define the first two tests by 1) analyzing the motivations of the employee; 2) analyzing the employer’s direction and control over the actions of the employee; and 3) analyzing the employer’s foresee ability of the activities of the employee. Employee actions which ultimately lead to an accident or injury must be motivated, in whole or in part, by the “desire” to further the interests of the employer. Motivation or desire can be out of fear that failure to perform will result in the loss of a job, or from a more altruistic desire to do well for the employer. The basis for the motivation or desire is irrelevant; it is the fact that the motivation exists that leads to compensability. Further, the actions must, to some extent, be at the presumed direction of the employer or potentially foreseen by the employer.

Injury may, in fact, arise out of employment and may even occur in the course of the employment but still be outside the scope of employment, negating compensability under workers compensation law. (Our lift operator example in the first paragraph above.)

Establishing an injury as work related is much simpler when employees work from a fixed place of employment on a fixed schedule and are injured while in the midst of their assigned duties. A lift operator hit by the lift during her shift will meet all three tests with only minor question.

Stay safe so you can enjoy the season!

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