

Workers' Compensation: When Is an Injury or Disease Covered?

Q: What is an "injury" for workers' compensation purposes?

A: In general, "injury" includes any injury received in the course of, and arising out of, the injured employees' employment. However, the workers' compensation statute specifically provides that "injury" does not include:

- 1) psychiatric conditions, except where the condition has arisen from an injury or occupational disease;
- 2) injury or disability caused primarily by the natural deterioration of tissue, an organ, or part of the body;
- 3) an injury or disability incurred when an employee is participating voluntarily in an employer-sponsored recreation or fitness activity, provided that the employee has signed a waiver of compensation for injuries sustained in such activities.

Q: Are there cases where workers' compensation will not cover an employee's injury?

A: Yes. Several circumstances may preclude compensation for an injury, even where the injury may have occurred on the employers' premises. These potential defenses include the following:

- 1) purposely self-inflicted injuries;
- 2) intoxication;
- 3) horseplay and fighting: injuries sustained as a result of horseplay or fighting are not compensable where the injured employee instigated or participated in the horseplay or instigated the fight.

Q: Will injuries sustained during work-related travel be compensated?

A: Whether or not a travel-related injury will be compensated depends on the nature of the travel involved. Under the so-called "going and coming" rule, where an employee has a fixed place of employment, an injury sustained while traveling to or from that place of employment will not be covered. However, where travel is an integral part of the employment, and creates a risk greater than the typical commute, an injury sustained during the travel will be covered (e.g., a traveling salesperson with no fixed place of employment).

Q: What about injuries in other common employment situations?

A: Based upon the case law which has developed over the years, the following rules exist for determining whether or not injuries occurring in other common situations will be compensated through workers' compensation:

- 1) Parking lot injuries: the "going and coming" rule ends once the employee reaches the employer's premises. Thus, where an injury occurs in a parking lot owned or controlled by the employer, it will generally be compensated. Where the lot is not owned or controlled by the employer, however, this rule will not apply.

2) Lunch hour and break time injuries: in general, injuries occurring on the employer's premises are covered. This rule of compensability extends to injuries sustained while an employee is on a lunch break or other break authorized by the employer. An injury sustained off-premises on a lunch hour, however, generally is not compensated, whether the break is paid or unpaid.

Q: Are stress-related conditions covered by workers' compensation?

A: Recall that purely psychological conditions are not covered unless they arise from a work-related injury. Thus, a mental condition caused by work-related stress will not be compensated. Physical conditions caused by work-related stress are treated differently. Where work-related stress causes a physical injury (e.g., a stress-related heart attack), the injury will be covered where it is shown that the employee was subject to pressures greater than those occasionally experienced in most types of employment.

Q: Is the aggravation of a pre-existing injury compensable?

A: In general, the "substantial" aggravation of a pre-existing condition is a compensable "injury" for workers' compensation purposes. Such an aggravation must generally be proven by objective diagnostic studies or clinical findings.

Q: What is an "occupational disease?"

A: An occupational disease is defined under the Workers' Compensation Act as a disease contracted in the course of employment, wherein the nature of the employment puts an employee at risk of contracting the disease to a greater degree and in a different manner than would be true of a member of general public. A common occupational disease is carpal tunnel syndrome, caused by overuse of the hands in a job that requires extensive manipulative use of the hands.

Q: I understand that the aggravation of a pre-existing injury is generally covered by workers' compensation, but what about the aggravation of a pre-existing disease? Would that be covered?

A: No. Unlike the aggravation of a pre-existing injury, the aggravation of a pre-existing disease condition generally will not be compensated, since the statute requires that the disease be contracted in the course of the employment in order to be covered.

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Law You Can Use is a weekly consumer legal information column provided by the Ohio State Bar Association. This article was prepared by Brian P. Perry, an attorney with the Cincinnati firm of Dinsmore & Shohl, L.L.P.

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