Employers Should Know Extent of Responsibility for Employees' Injuries

Q: I own a business where my employees are occasionally injured on the job. Am I directly responsible for their injuries?
A: Generally, no, as long as you comply with the Ohio workers' compensation law. Participating employers have created and maintained a state fund by paying workers' compensation premiums to the state of Ohio. The Bureau of Workers' Compensation administers the fund, and an employee who is injured in the course of his or her employment may apply for and receive benefits out of the fund from the Bureau of Workers' Compensation. That employee may not make a claim directly against the employer. The two-fold purpose of this system is to insulate participating employers against employees' claims for injuries, while providing benefits to injured employees from an independent fund regardless of fault of either employer or employee.

Q: Are there any situations where I might still be liable to my injured employee?
A: Yes. You may be held responsible if you do not comply with the Ohio workers' compensation law. Also, you may be liable even if you do comply with that law, but have injured your employee by committing an "intentional tort."

Q: What is an "intentional tort?"
A: An employer commits an intentional tort against an employee when the employer commits an act with the intent to injure an employee or cause the employee to suffer a disease, a condition, or death. An employer is also presumed to commit an intentional tort if an employee is injured because the employer intentionally removes an equipment safety guard or makes a deliberate misrepresentation about the hazardous or toxic nature of a substance.

Note: Before April 7, 2005, the definition of intentional workplace tort was different from the definition above, and it included more kinds of injuries. It previously included situations where an employer knew an injury was certain or "substantially certain" to result from the employer's act and, despite this knowledge, still required the employee to work under the dangerous conditions.

However, for injuries after April 7, 2005, the Ohio legislature passed a law eliminating the "substantially certain to occur" cases. The current law still makes an employer liable for either intentionally causing injury or acting with the belief that the injury was "substantially certain to occur," but it redefines "substantially certain" to mean the employer has acted with a deliberate intent to cause an employee to suffer an injury, a disease, a condition or death.

Q: Will the commercial general liability insurance policy I carry on my business cover an intentional tort claim for an employee's physical injury?
A: Probably not. First you need to look at your coverage to see if it excludes all "intentional torts" of any kind. But even if the policy claims to cover intentional torts, the new statute enacted by the legislature may cancel it out. Under the old law, the Supreme Court of Ohio held that it was against public policy for insurers to cover damages from intentionally caused bodily injuries, but it was

acceptable to cover actions that made injuries "substantially certain to occur." Now that the legislature has eliminated the difference between intent-to-injure torts and substantial-certainty torts, it would likely violate public policy for an insurer to provide coverage for any form of workplace intentional tort. The only possible exception might be coverage for injuries caused by the removal of a safety guard or a misrepresentation about a toxic substance, since a court might consider those situations different from intentionally caused injuries.

Q: I have heard that workers' compensation benefits are available only for an employee's physical injuries. Can an employee therefore sue my business for purely psychological injuries?

A: Yes. The workers' compensation laws allow compensation only for bodily injuries (and psychological injuries arising from such bodily injuries). They do not, however, prevent an employee from bringing legal action against an employer for negligence where a purely psychological injury occurs. For example, if an employee has who suffered purely psychological injuries as a result of a robbery at the employer's business, the employee may bring an action against the employer (so long as the employee's psychological injury did not result from a physical injury).

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