

# **KAHN, DEES, DONOVAN & KAHN, LLP**

## **ATTORNEYS & COUNSELORS AT LAW**

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### **INDIANA WORKER'S COMPENSATION BASICS**

*by Lee Baker*

The Indiana Worker's Compensation Act governs injured employees' right to sue their employers. When an employee's injury or death occurs from an accident in the course of employment, only the Indiana Worker's Compensation Board can decide the case.

An "accident" is an event intended neither by the employee nor by the employer. The phrase "in the course of employment" refers to the time, place, and circumstances surrounding the accident. Employees commonly assert three exceptions to take their cases out of the Worker's Compensation realm: (1) the injury was not an "accident," (2) the injury did not "arise out of and in the course of employment," or (3) the employee's condition is not considered a "personal injury."

Intentional injuries are by definition not accidental. So, when a co-worker intentionally injures an employee, no worker's compensation claim is involved.

Injuries that do not "arise out of employment" are also not compensable under the Act. A typical example of an injury that does not arise out of employment is when an employee is injured as a result of horseplay with a co-worker. An employee who is injured in horseplay with a co-worker can bring a court action against the co-worker, but has no worker's compensation claim. Another example is an employee who, while on vacation, is rear-ended by a vehicle owned by his or her employer. The accident did not "arise out of" the employment; therefore, the employee may bring a civil action against the employer.

Employees who allege that they have suffered "embarrassment and humiliation" or "damage to professional reputation" do not have a personal injury that qualifies for Worker's Compensation. Consequently, claims of sexual harassment, racial and age discrimination, which often involve only psychological and/or emotional injuries, are not amenable to Worker's Compensation. **IMPORTANT NOTE:** When an employer terminates, or otherwise retaliates against, an employee who seeks benefits under Worker's Compensation, the employee may sue the employer for both compensatory and punitive damages, over and above the worker's compensation benefits received.

#### **WHEN TO FIGHT**

Most cases involving a work-related injury never result in a claim being filed with the Worker's Compensation Board. In approximately 90 % of the cases, the employee simply receives statutory medical care and the benefits to which he or she is entitled, and the matter is resolved. With respect to those cases that result in a claim being filed, 9 out of 10 will be resolved without a hearing.

For those cases where claims are filed, and litigation proceeds, the process is expensive. If the stakes are not high, it is rarely worthwhile to go to the expense of a hearing before the Board. If there is simply a difference of opinion, i.e., a doctor thinks an injury resulted in a 5 % impairment and another believes it resulted in 10% impairment, economics dictate that the matter should ordinarily be settled.

On the other hand, if the employer suspects a fraud, the condition is exaggerated, or the employee is malingering, it may very well be worthwhile to litigate the claim. Indeed, this is particularly true if the employer feels that other employees will be influenced or emboldened to make such claims by the settlement of the claim.

#### **WORKER'S COMPENSATION PROCEDURES**

The Worker's Compensation Board has seven Members. Cases are heard by a Single Member. When a Single Member renders a decision in a case, either party has a right to apply for review of the decision by the Full Board. The application for review must be filed within 50 days of the issuance of the Single Member's decision. Review of a Single Member's decision by the Full Board involves a new hearing. The Full Board's decision can be appealed to the Indiana Court of Appeals.

While a hearing before a Single Member is very similar to litigation in court, the process is somewhat less formal. The typical hearing is relatively short in duration. As a general rule, the employee will testify first, and then, be cross-examined by defense counsel. Once the employee has finished putting on a case, the employer will call witnesses, who then testify and are cross-examined by the employee's counsel. The employee may then call rebuttal witnesses.

## **DO'S AND DON'TS OF WORKER'S COMPENSATION**

- Always send the claimant to the best available physician for the type of injury.
- Know the typical healing period for each type of injury and, if the employee has not improved, immediately call for expert advice.
- Do not let the employee choose a physician.
- Be cautious and aware of:
  - Past medical treatment for the same or similar problems
  - Atypical secondary gain
  - Approaching retirement
  - A disabled or unwell spouse
  - Drug-seeking behavior
  - Child care issues

*Lee Baker handles civil litigation and worker's compensation cases and civil appeals. He is a member of numerous committees of professional organizations, including the worker's compensation section of the Defense Trial Counsel of Indiana. Recently Lee was elected an alternate delegate to the Indiana State Bar Association House of Delegates.*