

Employment Law Issues in Workers' Compensation Claims



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Basic Employment Law Issues

- Workers' Compensation Plan
- Accommodation of Light Duty
- FMLA
- ADA
- Termination



Workers' Comp Plan

- *Phases of a Claim*
 - Accident/Reporting
 - Medical Treatment
 - Light Duty
 - MMI
- *Other Issues*
 - Litigation
 - Settlement



Workers' Comp Plan

- Point Person
- Reporting: Form 18 and Form 19
- Communication with Insurance Company
- Attorney Representation
- Return to Work issues
- Supervisor Training
- Settlement



Light Duty: Pre-MMI

- Light duty program
- Light duty job description
- Light duty video?
- Follow the process:
 - Doctor review and approval
 - Job offer to employee
 - Failure to show up



Post MMI: Suitable Employment

- Once an employee reaches MMI, suitable employment is defined as employment which the employee is capable of performing considering the employee's:

pre-existing and injury-related physical and mental limitations

vocational skills

education

experience

Also: 50 mile radius of residence/ education kicks in if not 75% wages

Suitable Employment

- Modification?
- Is the job within the physical restrictions?
- Made-up job?
- Is job offered to a member of the general public?
- Doctor Approval
- Trial Period of 9 months



Family and Medical Leave Act

- Applies to private employers with 50 or more employees (no limit on public school employees).
- Applies only to locations where there are 50 or more employees within a 75 mile radius.
- Applies only to employees who have been employed with the employer for the previous 12 months and who have worked at least 1,250 hours in that period.
- The FMLA allows for up to 12 weeks of unpaid leave in a given year for an Employee's serious health condition.

FMLA/ Attendance ISSUES

- Consistent policy
- Explanation of how laws/company rules coincide in company handbook
- Attendance in a denied workers' comp claim



ADA

- Once employers hit 15 employees, they are subject to anti-discrimination statutes, the most important of which are:
 - 1) Title VII of the Civil Rights Act of 1964
 - 2) The Americans with Disabilities Act



Americans with Disabilities Act

- Prevents discrimination against individuals with disabilities

AND

- Requires “reasonable accommodations” for disabled individuals in some circumstances



The Basics

- Prohibits discrimination on the basis of disability against a “qualified individual with a disability”
- Three definitions:
 - 1) Actual disability – a physical or mental impairment that substantially limits one or more major life activities
 - 2) Record of disability – a record of an actual disability
 - 3) “Regarded as” having a disability – employer believes the individual has an impairment (law no longer requires that the perceived impairment substantially limits a major life activity)

Major Life Activities include:

- Caring for oneself
- Performing manual tasks
- Seeing
- Hearing
- Eating
- Sleeping
- Walking
- Standing
- Sitting
- Reaching
- Lifting
- Bending
- Speaking
- Breathing
- Learning
- Reading
- Concentrating
- Thinking
- Communicating
- Interacting with others
- Operation of major bodily functions (immune system, special sense organs and skin, normal cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive)
- Working

Qualified Individual with a Disability

- Someone who can perform the “essential functions” of the job in question, with or without a reasonable accommodation



Essential Function

- “The fundamental job duties of the employment position the individual with a disability holds or desires.” 29 CFR § 1630.2(h)(1)

- Employer’s judgment as to what functions are essential

Written job descriptions

Amount of time spent on the function

Consequences to other employees in not requiring that the employee perform the function

Reasonable Accommodation

- Case-by-case analysis based on factual circumstances
- Employee does not have sole prerogative to select or chose (employer can choose an accommodation that is not the employee's choice but it must be reasonable and effective)
- Employer is only required to accommodate a known disability – burden is on the employee to notify the employer

The ADA Bottom Line

- Presume that everyone with an impairment is protected by the ADA
- Every adverse employment action related to an individual's physical or mental condition should be presumed to be a potential ADA case
- Don't count on showing that the individual is not disabled
- Focus efforts on showing that the correct employment decision was made, whatever the disability status
- Proficiency at conducting individualized assessments is now critical

WC and ADA

- Suitable employment v. Reasonable Accommodation
- Can both be pursued at once?
- Reasonable accommodation for workers' comp injury



Termination

The reason for the accident is also the reason for the termination

Bad Employee gets hurt

26 Week Rule

Right to Benefits when Fired on Workers' Comp

- Potential for REDA claim
- Consistency is Important
- General Release and Resignation



Wrongful Termination

- North Carolina Retaliatory Employment Discrimination Act (“REDA”)
 - Illegal to retaliate against an employee because he/she files a WC claim.
 - Does not require you to hold the job or to accommodate restrictions.
 - Does not mean you can’t terminate someone who is out of work for a WC injury.