

Compensation conundrum

What to know when questions come up about workers' comp entitlement

INTERVIEWED BY MARK SCOTT

The authority of an employer to deny an employee's entitlement to workers' compensation benefits can sometimes be difficult to define. The challenge arises when the employee has done something that leaves the individual unable to work, says Dave McCarty, a director at Kegler, Brown, Hill + Ritter.

"Most employers have written work policies that lay out what you can and can't do as an employee in that company," McCarty says. "Those policies have implications on employment status. The question is to what degree can those policies also be used to impact your workers' comp entitlement?"

In other words, if you have an employee who is terminated as a result of breaking a written company rule, are you still responsible to cover the employee's workers' compensation claim?

Smart Business spoke with McCarty about what to do when faced with questions about workers' compensation entitlement.

How do workers' compensation entitlement cases come about?

They happen more often than you might think in a variety of scenarios. For example, you have an individual who lies on his employment application. He says he has a commercial driver's license and gets hired and injured before it's discovered that he lied and wasn't qualified for the job. So you have a valid workers' compensation claim, but a question as to whether he is entitled to compensation or only payment of medical bills. It's a big deal to employers because compensation being paid as opposed to medical benefits being paid, things like total temporary disability and other forms of compensation, are big cost drivers for employer premiums. If employers can avoid

DAVE MCCARTY
 Director
 Kegler Brown Hill + Ritter

(614) 462-5469
 dmccarty@keglerbrown.com

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WEBSITE: Want to know more about Dave? Check out his full profile at www.keglerbrown.com/mccarty.

having to pay compensation, even though there is a valid claim, that's significant.

What is the voluntary abandonment doctrine and how does it apply in these cases?

If an employee is fired for violating a written work policy that clearly defines the prohibited conduct, which has been identified as a dischargeable offense and which the employee knew or should have known, he is not entitled to temporary total disability benefits. The reason is the fact that it is his own action, rather than the injury in the workplace, which prevents returning to work and therefore the loss of wages. There needs to be a causal connection between the injury and the loss of wages in order for the person to be entitled to compensation.

In 1995, a case called *Louisiana-Pacific* said that if you as an employee take some action that you know or should know is going to result in your termination, the natural consequence of that act which can be anticipated is you're going to lose your job. The causal connection between the injury and the loss of wages is broken.

What is total temporary disability?

It's defined as a temporary inability to return to the former position of employment. So whatever the person was doing at the time he or she got hurt, if the doctor says as a result of the injuries, the person can't do

his or her regular job and it is a temporary situation, not a permanent inability and then that person doesn't return to work, they would be entitled to temporary total compensation. Other than when incarcerated, that rule is pretty universal with one exception: if you commit violations of written work policy that result in your termination, you may not be entitled to compensation.

Are employers typically familiar with how these cases are handled?

Enough employers are unaware of how this issue is handled that legal advice is recommended. Larger employers often have a support staff in place and probably have encountered these situations before. Smaller employers may not have the experience to realize that this is a defense that might be the difference between being able to stay in a group and have really good premium savings or get kicked out of the group and have the business's bottom line really be impacted.

How should employers respond to workers' compensation entitlement questions?

Meet with legal counsel before deciding on a course of action. If a network of attorneys and third-party administrators can be established to serve as a sounding board when these issues come up, it can make dealing with them much easier. ●