



Workers' Compensation

by John D. Whitaker

Edward R. Murrow once said of the situation in Vietnam "anyone who isn't confused doesn't understand the situation." I think the same can be said of parts of our legal system. We have rules, we have exceptions to the rules, and then there are situations where the rules don't even apply. In the case of employment-related injuries, the usual rules don't apply because the legislature has created a whole different system. This system controls most work-related injuries, some of the time. How's that for confusing? We call this system Workers' Compensation.

The Workers' Compensation system was designed to compensate workers who are injured while engaging in "extra hazardous" employment. In Wyoming, when a covered employee is killed or injured at work, the Wyoming Division of Workers' Compensation is the system created by the legislature to provide compensation to the injured employee or, in the event of death, the family. Workers' Compensation is a compensation system that functions outside the normal legal framework designed to compensate injured people.

This system was created in Wyoming in 1912, and although the system has evolved since its creation, the basic goal remains to provide quick and efficient compensation to injured workers at reasonable cost to the employers without consideration of fault. When it was created, injured workers were forced to pursue compensation using the legal process. This forced the injured employee to file suit against the employer. The employee had to prove that the injury was the employer's fault, just like any other injured person seeking compensation for an injury. This process takes time, and if the jury found that the injury was not the employer's fault, the employee had to pay all of his own medical bills. The legislature decided that forcing an injured employee to seek compensation in this manner resulted in significant hardship to the employee. The system was de-



signed to cover an injury no matter who was at fault. Under our present system, when an injury occurs at work, the employee must file a claim with the Division of Workers' Compensation, and if the department concludes that the employee is a covered employee, and that the injury occurred while working, the employee is automatically entitled to compensation. In return for automatic compensation, the employee gives up his right to sue his employer for his injuries. In return for contributing into the fund, the employers are granted immunity from suits.

Unfortunately, this system has flaws on both sides.

On the employee's side, the compensation provided is usually significantly less than an employee might expect if the case were decided by a jury. For example, if an employee is killed, the total death benefit available is approximately \$144,000. This figure is the product of a complicated formula used by the Division, which is based upon the last 54 months of income for the deceased employee. If an employee were allowed to sue his employer, a wrongful death lawsuit verdict could easily go well beyond a million dollars for the same person.

For the employer, the drawback is that no matter how careful the employer, his account will be charged for an injured employee even if the injury is the employee's fault. Fraud on the part of the employee is also a factor in this system.

The one major exception to this system is that the employee can sue a third party if they were the cause of the injury. If the employee is successful in this type of suit, he must repay Workers' Compensation for the benefits expended on his behalf which were charged to his employer, again based upon a complicated formula.

On a final note, the employees have a very short time to file a claim, so if you have been injured on the job you should not wait around to file a claim. If you have any questions about this system, you should contact a lawyer.

The Wyoming State Bar does not certify any lawyer as a specialist or expert. Anyone considering a lawyer should independently investigate the lawyer's credentials and ability, and not rely upon advertisements or self-proclaimed expertise. This informative column is brought to you by John Whitaker who practices personal injury and criminal law throughout Wyoming. He can be reached at JDWTL@aol.com or by calling his office in Casper at 265-6204.