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Third Party Liability for Work Related Injuries

People are often injured at work. In fact, in 2007 alone, there were almost 4 million work related injuries over 5000 of which were fatal. On many occasions, these injuries are caused by individuals outside the injured worker's employer.

The most immediate question that arises for an injured worker in this situation is who is responsible for his or her injuries. The answer is both the employer and the third party. However, this answer is qualified by the Worker's Compensation Act.

The employer is required by New Mexico law under the Worker's Compensation Act to carry worker's compensation insurance for all work related injuries. Therefore the injured worker can and should make a worker's compensation claim through the employer's insurance.

In return for compliance with the Worker's Compensation Act, the employer is sheltered from personal injury lawsuits by the employee in all but the rarest situations. In fact, the employer's gross negligence is not enough to waive the protections of the Worker's Compensation Act.

In short, the employer will not be liable in tort for any injuries suffered by the worker. The employer's liability and the worker's right to recover against the employer are both limited to recovery under the Worker's Compensation Act.

Unfortunately, the Worker's Compensation coverage is often grossly inadequate to cover the full spectrum of damages in cases of serious or catastrophic work related injuries. Though the Worker's Compensation Act limits the employer's liability, it does not limit the liability of third parties that caused the harm.

There are countless situations where the worker's injuries were caused by third parties. These include injuries caused by contractors, sub-contractors, vendors, customers, visitors, guests and others that come in contact with the worker during the course of a workday. Among the most common are auto accidents.

By way of example, in case of an auto accident, the worker would be limited to recovery against the employer under the Worker's Compensation Act even if the employer were partly responsible for the accident. This would be the case

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in virtually all cases unless the conduct of the employer met the very employer friendly standards set forth in *Delgado v. Phelps Dodge*. Though the worker may assert a worker's compensation claim in this case, the worker would be well advised to explore recovery from the other driver.

The same would hold true for any other work related injury caused by a third party. Due to the severe limitations on recovery under the Worker's Compensation Act, it may well be that full recovery for the worker's injuries and damages will come only through the third party.

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