

WHEN CAN A PERSONAL INJURY CLAIM BE FILED FOR AN ON-THE-JOB INJURY

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In most states, a worker's remedy against the employer for a work related injury is limited to the benefits provided by the Workers' Compensation statute. This is the worker's sole remedy against an employer with a very few exceptions such as where the employer actually intends to cause harm to the worker. Workers' Compensation coverage is sometimes referred as the "exclusive remedy" of the employee against the employer. Typical Workers' Compensation laws also bar actions against co-employees who may have caused the worker's injury. This can work to the injured employee's advantage because the employee will receive benefits for medical care, rehabilitation, and lost wages even if the injured worker negligently caused his own injury.

The "exclusive remedy" provisions that protect the employer normally only apply when the employer carries Workers' Compensation Insurance as required by state law. If an employer chooses not to obtain the required coverage, he will not be protected by the "exclusive remedy" provisions.

There are cases and circumstances where a personal injury claim can be made against a third party defendant. For example, if the employee is injured by the actions of someone who is not a co-employee or if he is injured on the premises of another business, the injured worker may be able to bring a personal injury claim against the third party. In situations where a worker is injured due to the negligence of a third party, a personal injury claim may be filed by the injured employee in addition to the claim for Workers' Compensation benefits. Also, Worker's Compensation laws do not prohibit an injured worker from filing a personal injury suite for injuries that have been intentionally caused by the employer. Working with an attorney is beneficial when determining whether or not Workers' Compensation is the "exclusive remedy" for injuries that may have been caused by a third party.

The following are situations where an injured worker may be able to bring a personal injury claim in addition to the Workers' Compensation claim:

- **Third Party on Employer's Premises:** A third party may be on the employer's premises and may commit an act that causes an injury to the employee. For example, a worker could be injured by a delivery driver who hits the worker while operating or driving a truck or forklift, or a contractor who is repairing a roof may drop a tool on a worker's head. If an injury is caused by a third party who has no employment relationship with the worker's employer, the worker may be able to pursue a personal injury claim against the person that caused the injury and the employer of the person who caused the injury.
- **Injury Occurring on Someone Else's Premises:** Sometimes a worker may have to perform job duties at a remote job site and may suffer injury due to someone else's negligent conduct. For example, a worker who performs his job tasks at a different facility may be injured by the negligence of a third party while performing his job duties. He would be able to pursue a personal injury claim against the third party and the third party's employer. Another example is where a delivery driver is injured in a car accident. He may be able to pursue a personal injury claim against the driver who caused the accident in addition to pursuing a Workers' Compensation claim.
- **Product Liability Actions:** A worker may be able to bring a product liability claim if he or she is injured by using unreasonably dangerous or defective equipment or due to dangerously deficient warnings or instructions relating to the operation of the equipment. The distributor, installer of the equipment, or the manufacturer may be liable for the worker's injuries under these circumstances. In addition, the injured worker would be able to pursue a Workers' Compensation claim.
- **Intentional Torts:** The "exclusive remedy" will not apply if the employer actually intends on harming the worker, and in that case, the injured worker can file a lawsuit against his or her employer. This does not extend to situations when the employer creates an unlawfully hazardous working environment or acts indifferently to the worker. It must be shown that the employer had actual intent to harm the worker.

One of the most common situations where an injured worker may have a personal injury claim against a third party involves injuries at construction sites. Workers from multiple contractors and subcontractors in many cases work at the same time on the same construction site. When someone is injured on the construction site, it is not unusual for the injury to be caused by the negligence of a third party who is subject to personal injury litigation.