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The Interplay Between Workers=Comp, ADA & FMLA

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Overview

PThe History of Workers= Compensation Law

PThe Bermuda Triangle

<Workers= Comp

<Americans with Disabilities Act (ADA)

<Family and Medical Leave Act (FMLA)

PGetting Work Comp Claimants Back to Work

*PDisciplining and Terminating Work Comp
Claimants*

PCase Studies

The History of Work Comp

- P First workmans=compensation laws were adopted in the late 1800s.*
- P Predominantly state, not federal, law*
- P Nebraska adopted its workers=compensation law in 1913.*
- P Prior to workers=compensation:*
 - < Employees brought A personal injury @ claims for work-related injuries.*
 - < Employee claims were subject to multiple employer defenses.*
 - B Contributory Negligence*
 - B Fellow Servant Doctrine*
 - < Cases were often tried to juries.*
 - < Employees rarely won, but when they did the jury verdicts were potentially large.*

The History of Work Comp

PWorkers= Compensation is the exclusive remedy for a work-related injury.

PWorkers= Compensation is the ultimate compromise:

<Employees are entitled to recover for all work-related injuries not resulting from willful negligence.

<Recovery is limited.

The History of Work Comp

Workers= Compensation Law Today

When personal injury is caused to an employee by accident or occupational disease arising out of and in the course of the employee=s employment, the employee shall receive workers= compensation benefits provided the employee was not willfully negligent at the time of the injury.

Neb.Rev.Stat. '48-101

The Bermuda Triangle

PADA

PFMLA

PWorkers = Compensation Laws

Americans with Disabilities Act

P ADA prohibits discrimination in employment against qualified individuals with a disabilities

- < Who is a Aqualified individual @?*

- < What is a disability?*

P Requires employers to provide @reasonable accommodations @ to qualified individuals with disabilities

P Remedies for violations include:

- < Reinstatement*

- < Backpay*

- < Equitable relief*

- < Compensatory damages*

- < Punitive damages*

Americans with Disabilities Act

What is a Disability @?

P A physical or mental impairment that:

< substantially limits a major life activity

< A record of such an impairment

< Being regarded as having such an impairment.

P Cause of disability can be work or non-work related

Americans with Disabilities Act

What is a Disability @?

P A Substantially @ limits one or more major life activities

P Life activities = caring for oneself, walking, seeing, hearing, speaking, breathing, learning, reproduction, working

P A Substantially limits @ depends on:

B Nature and severity of impairment

B Duration of impairment

B Permanency/Long-term impact of impairment

P Major life activity of A working @:

B Geographical area

B Types of jobs individual is disqualified from

B Disqualification from one particular job is not enough

Americans with Disabilities Act

P Duty to reasonably accommodate

< Accommodation = any change in the work environment or the way things are customarily done

< Examples:

B Job restructuring

B Modified work schedule

B Modifying work station

B Assignment to vacant position

P Duty to reasonably accommodate doesn't exist where:

< Accommodation would be an undue hardship @ on employer

B Significant difficulty expense

< Employee poses a direct threat @ to health or safety

B Requires significant risk of substantial harm

Americans with Disabilities Act

Recent Development--You be the judge!

- ⌞ *Ella Williams worked for Toyota on the assembly line and developed carpal tunnel syndrome.*
- ⌞ *Williams was placed on permanent work restrictions severely restricting what she could lift and repetitive hand movement.*
- ⌞ *Toyota modified Williams's job duties to avoid these types of tasks.*
- ⌞ *A couple of years later, Williams's duties changed to include work that required her to hold her hands and arms up around shoulder height for several hours at a time.*
- ⌞ *Williams began to suffer from pain in her neck and shoulders, and after seeking care for her neck and shoulder pains,*
- ⌞ *Williams asked to be returned to her previous duties which involved minimal use of her hands and arms. Williams was eventually placed under a no-work-of-any-kind restriction by her treating physicians.*
- ⌞ *A little over a month later, Toyota terminated Williams's employment, citing her poor attendance record as the reason.*
- ⌞ *Williams claimed that she was disabled under the ADA because her carpal tunnel prevented her from engaging in the major life activity of working.*
- ⌞ *Ruling?*
 - < *Williams was not disabled under the ADA*
 - < *Could still perform many jobs, if not the particular job she held.*

Family and Medical Leave Act

The Basics

P *Adopted in 1993*

P *Covered employers:*

- < All public employers, regardless of size; and*
- < Private employers who employ 50 or more employees for at least 20 workweeks in the current or preceding calendar year*

P *Eligible employees:*

- < Worked for the employer for at least 12 months;*
- < Worked at least 1,250 hours during the 12 months prior to the FMLA leave; and*
- < Work at a location where at least 50 employees are employed at that location or within 75 miles of the location*

Family and Medical Leave Act

When does an Eligible employee qualify for FMLA benefits?

P For the birth of a child or to care for a newborn;

P For the placement of a child with the employee for adoption or foster care, and to care for the child;

*P To care for an immediate family member with a
A serious health condition @*

*P When the employee is unable to work because of a
A serious health condition @*

Family and Medical Leave Act

What is a Aserious health condition @?

PAn illness, injury, impairment or physical or mental condition that involves:

< Any period of incapacity or treatement with inpatient care;

B Overnight stay at hospital

< A period of incapacity requiring absence of more than 3 calendar days from work, school or other regular activities that also involves continuing treatment by a health care provider;

< Any period of incapacity due to pregnancy or prenatal care;

< Any period of incapacity dute to a chronic serious health condition;

B Asthma

B Epilepsy

< A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective; or

B Terminal diseases

< Any absences to receive multiple treatements that would likely result in incapacity of more than 3 consecutive days if left untreated.

B Chemotherapy

Family and Medical Leave Act

P*Benefits granted to eligible employees:*

< Up to 12 weeks of unpaid leave

< Maintenance of health insurance benefits during leave

< Reinstatement to the same or equivalent job

ADA, FMLA and Workers=Comp

The Bermuda Triangle

PA work-related injury can be:

- <An Accident and injury @for workers= compensation;*
- <A Disability @under the ADA; and*
- <A Serious health condition @under the FMLA.*

PWhich law applies determines:

- < Whether the Disability @must be reasonably accommodated;*
- < What limitations exist to terminate the employee;*
- < What benefits must be paid; and*
- < Whether reinstatement is guaranteed.*

Disciplining and Terminating Employees

Work Comp

P You cannot terminate an employee simply for having a work-related injury

P You cannot terminate an employee for filing for workers= compensation benefits

P You can hold employees who sustain a work-related injury to the same rules and policies as all other employees

Return to Work

Light or Full Duty

P Start with a detailed job description

P Use a A Fitness for Duty @ Form

< Requires doctor to answer specific questions

B Condition/Injury

B Impairment

B Duration

B Functional abilities of employee

B When is the employee's next doctor's appointment

< Attach job description

P If injury is related, you may communicate with doctor

< If FMLA only, you may not.

Employee Medical Information

P Numerous reasons why employee medical information must be kept confidential:

< Common law invasion of privacy

< ADA requires it

P ADA requires that it be kept in a separate file.

< Includes workers = compensation medical information

Light Duty

P **Benefits**

- < Better for employee=s mental and physical health*
- < Generally accellerates recovery process*
- < Helps coworkers who are filling in during employee=s absence*
- < May be a reasonable accommodation under the ADA.*
- < Especially important where vocational rehabilitation is at issue.*

P **Detriments**

- < Can prolong length of disability*
- < Can hurt coworker morale*
- < If light duty is done in one instance, may limit company=s ability to decline light duty in another*

Light Duty

Things to Remember

P All employees must be eligible for light duty, regardless of cause of injury

P All light duty should be temporary

< Do not create any permanent light duty positions.

P Employees should generally be held to the same policies

*< Unless modification of policy is necessary as a
Reasonable accommodation @ under the ADA*

P Do not allow employees to harass employees on light duty

Return-to-Work

Light Duty/Accommodating Restrictions

Case Study:

Susan works as a laborer, a position that requires repetitive bending and frequent lifting of objects 50 pounds or more. Today, Susan injures her back while lifting a stack of steel at work. After reporting the accident to her supervisor, she is sent for medical treatment, and does not return to work today. Susan reports for work tomorrow morning, with a note from her doctor releasing Susan to return to work, light-duty only for 4 weeks, with a 20 pound lifting restriction and no repetitive bending.

What do you do?

Return-to-Work

Light Duty/Accommodating Restrictions

Case Study:

Rick injures his lower back while tying down a tarp. After undergoing back surgery, Rick's doctor has declared Rick to be at Amaximum medical improvement @ with a permanent lifting restriction of 20 pounds, and only occasional bending, twisting and lifting. Rick's previous position required frequent bending, twisting, and lifting of material 75 pounds or more.

What do you do?

Hiring Employees

Risk of work comp injury?

Case Study:

Mario applied for a job at Chevron's refinery; after a pre-employment medical exam revealed that Mario had liver damage as a result of Hepatitis C, Mario was not offered a job. Chevron argued that exposing Mario to the toxins at the refinery would constitute a significant risk of substantial harm to Mario's health. Mario sued Chevron.

Ruling?

Return-to-Work

Accommodation v. Seniority System

Case Study:

Barnett injured his back while working in cargo-handling position with U.S. Airways. Barnett was able to transfer to a less demanding mail room job because of his seniority. The mail room job was subject to periodic bidding based on seniority under U.S. Airways's seniority system. Barnett's mail room job came up for bidding, and two other employees with more seniority intended to bid. Barnett asked U.S. Airways to make an exception and let him stay in position as an accommodation under the ADA for his injury. U.S. Airways opened the position for bidding, and Barnett lost the position. Barnett sues U.S. Airways.

Ruling?

Return-to-Work

Interactive Process/Reasonable Accommodations

Case Study:

Humphrey worked as a medical transcriptionist for Memorial Hospitals. She developed obsessive compulsive disorder which caused her to do such things as wash her hair for up to three hours, dress very slowly, and check continually for papers for work. These actions would cause Humphrey to be late for work or miss work all together. The Hospital allowed her an accomodation of coming to work at any time during the day, so long as she worked 8 hours per day.

Humphrey still missed work, and requested a different accomodation of working from home. It was company policy that any employee involved in disciplinary action, which Humphrey was, was not eligible to work at home; Humphrey was denied her request

Humphrey sued under the ADA alleging Memorial Hospitals failed to reasonably accomodate her disability.

Ruling?

Return to Work

Workers=Comp

Case Study:

Sally is a welder. While lifting a sheet of metal to weld, she falls to the floor and injures her back. Following extensive physical therapy, Sally is released to return to work. She is temporarily released with a 50 pound weight restriction. You find her a job painting screwheads. After one day of this work, Sallys says that it is too mentally stressful for her to paint screwheads (the only job available with a 50 pound restriction) and wants to go home.

Do you have to put her back on workers=compensation leave?

Return to Work

Workers=Comp

Case Study:

On March 1, Jerry injures his knee when he trips as a result of wrapping a power cord around his waist while using a drill. He goes to see Dr. Kwak who schedules him for arthroscopic knee surgery on March 16. He will then have two weeks of physical therapy after the surgery. He may be able to work part of the time--he doesn't know. On April 1, Joe Bob reports to work at 7:30 a.m. He has to go to physical therapy every day. He wants to go from 9:30 to 11:00 a.m. However, 10:00 a.m. is your busiest time of day.

What do you do?

Return to Work

Workers=Comp

Case Study:

Anna Nicole is a typist for Old Man, Inc. She breaks her wrist while trying to move a desk with a coworker. Anna Nicole is unable to work for six weeks and receives workers=compensation. After Anna Nicole=s wrist completely heals, she asks to return to work. A physician indicates that there is little risk that repetitive motion will damage Anna Nicole=s wrist. However, the Company refuses her request to return to the typist position because it believes that any repetitive motion will cause serious and permanent re-injury to her wrist.

Does the Company have to return Anna Nicole to her former position?

Recap

P *ADA, FMLA and Workers=Comp laws must always be considered.*

< *Not every injury is a Disability @under the ADA*

< *Not every injury is a Serious health condition @under the FMLA.*

P *Employees with work-related injury can be held to standard company policies and rules*

< *Caveat: Unless necessary for a reasonable accommodation.*

P *Documentation is critical*

P *When in doubt, ask yourself: What would a jury of employees think about our decision to terminate?*

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