

PENNSYLVANIA LEGAL UPDATE

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WORKPLACE INJURIES

The Pennsylvania Workers' Compensation Act takes away from employees their right to sue their employers for injuries that they suffer in the "course and scope" of their employment. But the loss of the right to sue is balanced by the strict liability that the Act imposes on employers.

With few exceptions, when employees are injured while working, they are automatically entitled to the medical and income benefits provided by the Act. The injured employee need not prove that the employer was negligent, and any negligence or fault on the employee's part does not reduce or eliminate the employee's entitlement to benefits.

Four Categories of Injuries

Recently, the Pennsylvania Supreme Court clarified the four categories of workers' compensation injuries. The first category is "physical-physical" injuries, where a physical stimulus causes a physical injury. An example of a physical-physical injury is a broken bone from a fall at work.

The second category is "psychic-physical" injuries, where a psychic stimulus causes a physical injury. An example is a heart attack from stressful working conditions. The third category is "physical-psychic" injuries, where a physical stimulus causes a psychic injury. An example is depression following a broken bone from a fall at work.

Finally, the last category is "psychic-psychic" injuries, where a psychic stimulus causes a psychic injury. Depression following sexual harassment at work is an example of a psychic-psychic injury.

When a worker claims to have suffered a psychic-psychic injury, he or she has to go an extra mile to prove the claim. Rather than simply proving that the injury exists and is work-related, a worker with a psychic-psychic injury has to prove that the injury was not just a subjective or personal reaction to normal working conditions. The worker must prove that the working conditions that caused the psychic injury were "abnormal."

Court Case

In the case before the court, a Pennsylvania coal mine employee suffered depression and a worsening of his post-traumatic stress disorder as a result of sexual harassment by his male supervisor. The male supervisor engaged in a pattern of sexual comments directed at the worker—the comments included specific sexual requests and details about the supervisor's admiration for the worker's appearance. On at least one occasion, the comments were made openly in the presence of other workers. The claimant worker had a history of mental health treatment and had been diagnosed as suffering from post-traumatic stress disorder arising from his military service in Vietnam.

The court found that while working at a mine exposes a worker to "rough and tumble" conditions where "crude" language is normal, the steady stream of sexual comments by the worker's supervisor did constitute abnormal conditions. The court noted that it was not normal

for mine workers to request sexual favors from persons of the same sex, and that the supervisor had actually been disciplined by the mining company for his persistent conduct.

Where sexual comments, even made in jest, are “beyond those accepted” in any given workplace, sexual harassment can constitute a psychic condition that can lead to a compensable injury. Further, the court emphasized that what may be “normal” in a police department will probably not be normal for an office worker. Each workplace must be analyzed separately to assess what employees can expect as normal workplace conduct and conditions.

Employers are responsible for enforcing civility in the workplace. Even when employee banter is part of a joking or humorous atmosphere, the employee who takes the language or the tone to an unacceptable level can easily create abnormal working conditions. All employers should have workplace rules that ensure that a courteous atmosphere is preserved in the workplace. Enforcement is essential. All too many workplace rules go unenforced.

Employees who are subjected to an abnormal level of teasing, bullying, harassment, or verbal abuse (sexual or non-sexual) are entitled to protection. Any employee who experiences such abnormal working conditions should follow the workplace grievance procedure if one exists. If none exists, the employee should document his or her concerns with a supervisor. Finally, where a workplace psychic event causes a worker to suffer physical or psychic symptoms, he or she should consider filing a workers’ compensation claim.

DON’T BUG ME

Pennsylvania’s Wiretap Act forbids the interception or recording of telephone and other communications without the permission of all participants to the conversation. Because federal law and most states permit “one party consent”—the consent of the recorder only—some Pennsylvanians assume that they can use their answering machines or other devices surreptitiously to record telephone conversations. Most of the states surrounding Pennsylvania are “one party consent” states. In Delaware, New Jersey, New York, and Ohio, you can record a telephone conversation without telling the other party. And since many Pennsylvania electronics stores openly sell fairly sophisticated recording, transmitting, and intercepting devices, it is easy to assume that their use is legal. But the Pennsylvania Wiretap Act clearly forbids any such recording or interception without the permission of all parties to the conversation and subjects you to criminal penalties for violations.

When people leave a message on your answering machine, they are consenting to that recording, knowing that they are leaving a recorded message. Such is not the case when you use an interception device on a telephone or simply activate your answering machine to record a conversation without telling the caller. Setting up a voice-activated cassette recorder or wearing a hidden recorder also violates the Act. If all parties consent to a recording, no crime occurs. But without the consent of everyone to the conversation, recording a conversation is always a crime in Pennsylvania.

UNEMPLOYMENT COMPENSATION IN PENNSYLVANIA

Quitting your job usually means that you are not eligible for unemployment compensation. Employees who “voluntarily leave work” cannot collect unemployment benefits unless they can prove that they left for “necessitous and compelling reasons.” Just like the words sound, necessitous and compelling reasons do not arise from ordinary circumstances—only remarkable and unusual facts amount to necessitous and compelling circumstances.

In a recent Pennsylvania case, a full-time comptroller for a small corporation quit her job and won the right to unemployment benefits. The comptroller was promised health insurance benefits over an eight-month period, but the employer never actually gave her the benefits. Previous owners of the company had provided health insurance benefits. After the company was purchased by a new owner, benefits were terminated, and the new owner never managed to restore a benefit plan to the company employees. The comptroller finally quit, claiming that she found the terms and conditions of employment unacceptable, the lack of benefits unacceptable, and the workload unmanageable due to generalized stress, excessive hours, and lack of competent help.

The court did not address the comptroller’s general concerns, finding instead that, because nearly eight months had passed without the new owner’s reestablishing health insurance, the comptroller had shown a necessitous and compelling reason for quitting and, therefore, was eligible to collect unemployment benefits.

It is well-settled Pennsylvania law that an employer’s imposition of a substantial unilateral change in the terms of employment constitutes a necessitous and compelling cause for an employee to terminate his or her employment. What is “substantial” is always a question decided on the particular facts of each case. It is important to note that the comptroller’s general dissatisfaction with her job conditions was not enough to support her claim for unemployment benefits. An employee’s general unhappiness does not amount to necessitous and compelling circumstances. But when an investor buys a new business, or an existing employer considers making changes in the terms of employment, it is always possible that employees unhappy enough to quit may be awarded unemployment compensation.

DISPUTES OVER PRIVATE ROADS

Particularly in rural counties, Pennsylvania’s landscape is peppered with private roads, private driveways, and shared-use arrangements of private parcels of land. It is not surprising that sometimes people cannot agree on the rights and responsibilities of users of shared private roads.

Recently, the Pennsylvania Superior Court found that a couple who purchased a landlocked parcel on the assumption that they could use a private road had assumed too much. The couple bought the small, landlocked parcel because it was on the Monongahela River. They planned to use it to truck coal to the river and ship it on barges for delivery down river.

All of the former owners of the landlocked parcel had enjoyed a right, or “easement,” to access the property by crossing a larger commercial tract owned by a realty company. The previous owners had used the private road across the realty company’s land for both residential and commercial activities. The previous owners had also engaged in commercial activity that

involved the use of trucks and other heavy equipment. But all of the previous owners who had used trucks and heavy equipment had reached various agreements with the realty company regarding their entitlement to use the private road. Shared maintenance, paving, and repair were resolved by the history of agreements.

The couple who bought the property for coal shipping were not able to reach an agreement with the realty company. When their negotiations failed, the couple sued to gain a “prescriptive” easement—one that the courts may permit even over the objection of the owner of the easement land. Prescriptive easements are permitted when owners of one parcel of land have crossed another parcel of land for over 21 years. In the case involving the coal-shipping couple, the court found that the long history of the use of the private road did create a prescriptive easement, but the court limited the use of the prescriptive rights to the earliest historic uses—cars and pickup trucks only. The court ruled that, as to the commercial use of the private road, all of the previous owners had negotiated agreements with the realty company. Because the commercial use was much more burdensome on the realty company and created many more issues of road maintenance, the court found that the couple could use the road only for car and pickup truck traffic unless they had an agreement otherwise with the realty company.

Many purchasers of land assume that they can continue to use rights of way and private roads simply because the former owners had the privilege. Because the rights associated with private easements are tailored to the history of the prior uses, wise buyers should always thoroughly research the actual previous uses of an easement before purchasing property.

FORGERY CAN BE A SERIOUS CRIME

A Pennsylvania building contractor recently learned a hard lesson about the penalties for forgery. The contractor completed work on a contract to make repairs to a motel property. Upon completion of the work, the motel owner requested a certification of the work by the township zoning officer before he would make final payment to the contractor.

Apparently unknown by both the motel owner and the contractor, such a certification of completion was not required by the township. However, in order to obtain final payment, the contractor created a certificate and forged the signature of the township zoning enforcement officer on it. The motel owner paid the contractor for the work completed.

When the zoning enforcement officer learned of the issuance of a forged certificate in his name, he reported the event to law enforcement authorities, and the contractor was charged with the felony crime of forgery. He was found guilty and was sentenced to a short term of imprisonment. He appealed the case, claiming that his forgery was not so serious that he should have been sent to jail.

Forgery is a serious felony if the writing is or purports to be “money, securities, postage or revenue stamps, or other instruments issued by the government.” Forgery is a less serious felony if the writing is or purports to be “a will, deed, contract, release, commercial instrument, or other document evidencing, creating, transferring, altering, terminating or otherwise affecting legal relations.” Otherwise, forgery is a misdemeanor.

The contractor was charged with the most serious felony, on the notion that the forged zoning certificate was in the category of “other instruments issued by the government.” The Pennsylvania appellate court agreed with the contractor that his forgery was better categorized as

a less serious felony, one “otherwise affecting legal relations.” The case was sent back to the trial court for resentencing.

Signing the name of another person to any document without clear permission is forgery. Even if the forgery does not cause another person harm or economic loss, forgery is a crime.

THANK YOU!

Thank you for choosing our firm for your legal needs. We hope that you will continue to count on us when you need legal help. We are just a phone call away.

We also appreciate the trust that you have placed in us by referring your friends, family, and associates to us for legal services. Thanks!