Legal Aspects of Employee Injuries and Illnesses in Hospitals

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This presentation is for informational purposes only and is not intended to provide legal advice. Since all cases are fact specific, you should contact an attorney to obtain advice regarding your specific situation.
Law Suit

- Can you be sued for a workplace injury/illness?
  - Generally, no
    - Exclusive Remedy under Texas Worker’s Compensation Act
(a) Recovery of workers’ compensation benefits is the exclusive remedy of an employee covered by workers’ compensation insurance…against the employer.

Includes work-related injury, occupational disease and death.
(b) Does not prohibit recovery of exemplary damages by surviving spouse or heirs of the body of a deceased employee whose death was caused by an intentional act or omission of the employer or by the employer’s gross negligence.
 Tex. Lab. Code § 408.001

- Exemplary Damages – damages awarded as penalty or by way of punishment but not for compensatory purposes, e.g. punitive damages
- Does not include economic or noneconomic damages (pain and suffering)
(c) “Gross Negligence” has the meaning assigned by the Civil Practice and Remedies Code

Act or omission that involves an extreme degree of risk, considering the potential harm to others and which the actor (employer) has actual, subjective awareness of the risk involved but proceeds with conscious indifference
(d) Determination that an injury is non-compensable does not adversely affect the exclusive remedy provisions
Governmental Employees

- State Institutions – 503.002 UT System
- Political Subdivisions – 504.002
- Adopt 408.001 except for (b) and (c)
  - Covered under Civil Practice and Remedies Code
Third Party Suits

- Not barred
  - Equipment manufacturers
  - Third parties
Deimer v. Cincinnati Sub-Zero Products, Inc.

- Negligent Design
- Power cord wrap
- Machine not unsafe when it left the manufacture, nor was it unsafe for its intended use
Bosch v. Perry

- ER nurse thrown against wall by patient
- Sued physician and patient who were both intoxicated
- Suit can proceed
Employee Election

- Waive Workers’ Compensation Coverage
  - In writing
  - No later than the 5th day after employment begins or notification that the employer has obtained coverage
Non-Subscriber

- Common-Law Defenses
  - Employee act intended to bring about the injury
  - Intoxication
Non-Subscriber

- Excluded Defenses
  - Contributory negligence
  - Employee assumption of risk
  - Negligence of a fellow employee
Non-Subscriber

- Plaintiff must prove negligence of the employer or agent acting within the general scope of the agent’s employment
- Note this is not the same as gross negligence
Brookshire Grocery v. Goss

- Employee stepped over cart, then hit her shin upon exiting
- Must prove negligence by employer
- No duty to warn of hazards that are commonly known or already appreciated by the employee
Contingent Workforce

- No “split insurance”
- Exclusive remedy rule applies if:
  - Client company named insured on staffing company’s policy
  - Staffing company obtains separate policy for client company
  - Client company has its own policy
Port Elevator v. Casados

- Fatality
- Staffing company’s insurance paid death benefits
- Client company entitled to exclusive remedy protection
Americans with Disabilities Act

- Does not cover independent contractors
- May cover contingent workers

Questions and Answers about Health Care Workers and the Americans with Disabilities Act
www.eeoc.gov/facts/health_care_workers.html
Northeast Alabama Regional Medical Center v. Isbell

- Secretary
- Latex Allergy
- Occupational disease?
Casarez v. NME Hospitals, Inc.

- AIDS patient
- Health care provider hired by family sues doctor and hospital for exposure
- Summary judgment for doctor
- Denial of hospital’s statute of limitation claim
Bishop v. Mount Sinai

- Needle stick
- Fear of contracting AIDS
- Emotional Distress Claim
- Denied