Workers Compensation Law

**C H A P T E R 2**

**Key Terms and Definitions**

|  |  |
| --- | --- |
| Assumption of the risk | A defense in negligence cases that shows |
|  | that the plaintiff was aware of the dangers |
|  | inherent in a specific activity and chose to |
|  | carry out the action in full knowledge of |
|  | these dangers. |
| Continuation of pay | The name for the workers’ compensation |
|  | benefit available to employees under the |
|  | Federal Employees’ Compensation Act. |
| Product liability | A legal theory for a cause of action against |
|  | a manufacturer or seller of a product that |
|  | causes injury to a person; liability is not |
|  | based on fault. |
| Tort | A wrong for which the law provides a |
|  | remedy. |
|  |  |

**True/ False**

|  |  |  |  |
| --- | --- | --- | --- |
| **1.** | T | F | COP refers to “contravention of protection.” |
| **2.** | T | F | Employees would be better off bringing suit under |
|  |  |  | traditional negligence law than they would be in filing a |
|  |  |  | workers’ compensation claim. |
| **3.** | T | F | Nonlawyers may legally represent clients contesting |
|  |  |  | Social Security and Medicare claims. |
| **4.** | T | F | The defense of “assumption of the risk” is available in a |
|  |  |  | workers’ compensation contested claim. |
| **5.** | T | F | Product liability actions are not available to injured |
|  |  |  | workers. |
| **6.** | T | F | A worker who is intentionally injured by a coworker or |
|  |  |  | supervisor may be entitled to take the case outside the |
|  |  |  | workers’ compensation system. |
| **7.** | T | F | States were far more progressive in developing workers’ |
|  |  |  | compensation systems than the federal government. |
| **8.** | T | F | The Federal Employees’ Compensation Act applies to |
|  |  |  | elected officials only. |
| **9.** | T | F | A tort is a wrong for which the law provides a remedy. |
| **10.** | T | F | All state and federal employees qualify under FECA. |

**Multiple Choice**

1. **A negligence action consists of the following elements: Duty, \_\_\_\_\_\_\_, Causation, and Damages.**
   1. Breach
   2. Psychological injury
   3. Statutory impact
   4. None of the above
2. **A defense in negligence cases that shows that the plaintiff was aware of the dangers inherent in a specific activity and chose to carry out the action in full knowledge of these dangers.**
   1. Inherent danger
   2. Waiver

* 1. Assumption of the risk
  2. None of the above

1. **What benefits can an injured federal employee expect to receive during the first 45 days following the injury or illness?**
   1. The same salary he or she would have received if the employee had remained on the job
   2. Two thirds of the normal salary
   3. One half of the normal salary
   4. One quarter of the normal salary
2. **Which of the following statements is true about the federal workers’ compensation program compared to the state programs?**
   1. The federal program is much more conservative than the state program.
   2. The federal program is much more liberal than the state program.
   3. The federal program and state programs are the same.
   4. There are no state workers’ compensation programs; there is only the federal workers’ compensation program.
3. **What advantages are there for an employee who can take his or her claim outside of the workers’ compensation legal process?**
   1. There are no advantages.
   2. The employee can continue to receive workers’ compensation benefits while the separate case is pending.
   3. The employee could win a much larger award.
   4. An employee cannot take a case outside the workers’ compensation system.
4. **The federal act that created the Social Security Administration**
   1. The Social Aid Act
   2. The Social Security Act
   3. The Federal Workers’ Compensation System Act
   4. The Federal Employee’s Compensation Act
5. **This act protects maritime workers injured or killed on the navigable waters of the United States.**
   1. The Federal Employers Compensation Act
   2. The Black Lung Act

* + 1. The Longshore and Harbor Workers’ Compensation Act
    2. The Teamsters Act
  1. **Legal liability that is not based on fault**
     1. Warranty
     2. Product liability
     3. Doctrine of Laches
     4. Doctrine of Caveat Emptor
  2. **A wrong or an injury for which the law provides a remedy.**
     1. Tort
     2. Malfeasance
     3. Nuisance
     4. Wrong
  3. **The form that is used to initiate a federal workers’ compensa-tion claim**
     1. CA–1
     2. CA–11
     3. WC–1
     4. SU–1028

**Short Answers**

1. **What is a negligence action, and how does it relate to a workers’ compensation claim?**
2. **Explain the basic elements of a product liability claim.**
3. **Can an injured worker bring both a private action against an employer and a workers’ compensation claim for the same injury? Why or why not?**
4. **Do workers waive all rights when they fall under the workers’ compensation system? If not, why not?**
5. **What is the Federal Employees’ Compensation Act?**
6. **Explain continuation of pay.**
7. **Besides FECA, are there other federal programs that provide benefits to specific groups of workers? If so, what are they?**

1. **Are criminal violations authorized under FECA? If so, what are they?**
2. **How does Medicare differ from Medicaid?**
3. **Who qualifies to receive Social Security Disability benefits?**

**Case Study 1**

Ron Roe worked for DEF Construction until he fell and injured his back. He received a workers’ compensation award and, as part of that award, some provision for rehabilitation and job training. However, Ron alleges that the job training was substandard and actually set him up to fail. He was required, for instance, to apply for jobs that he did not have the skills to compete or jobs that exceeded his physical abilities following his injury. Ron has decided to bring suit against DEF Construction for intentional infliction of emotional distress, a tort action that alleges that the company conspired with the rehabilitation services to break his “spirit” and to force him to give up on any additional services and thus the amount of money that DEF would have to pay for his rehabilitation.

DEF has countered that although workers’ compensation laws do allow an employee to bring a separate tort action for intentional actions by the employer and because this case has already been handled through the workers’ compensation system, any complaints that Ron has should also be handled through that same process. Of course, if DEF is successful with this argument, then Ron’s separate tort action must be dismissed.

**Questions About Case Study**

1. **What is the law about bringing a separate civil action for an intentional tort against an employer?**
   1. The law allows an action for an intentional tort.
   2. The law does not allow an action for an intentional tort.
   3. The law takes no position on such an action.
   4. Although the action is permissible, Ron Roe must be currently employed before bringing it.
2. **Is it important that Ron’s allegation of intentional infliction of emotional distress is separate in time from his original injury?**
   1. Yes, because it means that Ron’s allegation is not part of his original workers’ compensation claim and he is permitted to bring his separate action.

* + 1. Yes, because Ron can successfully allege that he has met the grounds for certiorari.
    2. No, because Ron was not employed at the time.
    3. No, because Ron was on rehabilitation at the time he alleges that this tort occurred.
  1. **How is the court likely to rule in this case?**
     1. That Ron cannot bring his civil action
     2. That Ron can bring his bring his civil action because the intentional tort was not part of his original workers’ compensation claim but occurred later in time
     3. That Ron’s petition for certiorari should be dismissed
     4. That DEF should be forced to pay damages to Ron

**Case Study 2**

Last year, three workers were on shift at Happy Burger Restaurant when one of the two on-site managers noted that the safe appeared to be missing $50. She called the other manager in and they both went through the petty cash. The second manager also concluded that $50 was missing and together, they confronted the three employees. Rita, Keysha, and Diane all had access to the safe where petty cash was stored, and each had, at various times, reason to be in or near the manager’s office. The two managers took each employee into a back room that was windowless and ordered that they strip down to their underwear. The employees were told that if they did not strip before a female manager, they would have to strip before local, male police officers. They were told that they could not leave the premises, that they would be fired if they refused to strip, and that “one way or another” their clothes would be removed.

Once all three employees were strip searched by the two managers and the money was not discovered, the managers checked with the local bank and learned that the teller had shorted their cash by $50 and that the bank had been attempting to contact the restaurant to clear the matter up.

All three employees have filed suit against Happy Burger, Inc., and the managers for alleging false imprisonment, intentional infliction of emotional distress, and several other charges. The restaurant and the managers countered by stating that the injuries sustained by the workers clearly fell under the jurisdiction of the Workers’ Compensation Act.

**Questions About Case Study**

1. **Are the employees’ injuries compensable under workers’ compensation law?**
   1. Yes, because the managers were acting under authority of the corporation.
   2. Yes, because the workers were hurt, if only emotionally.
   3. No, because the injuries were not accidental, they were intentional.
   4. No, because the workers did not state whether they were supposed to be on shift that day.
2. **Assume for purposes of this question that the court rules that the employees’ injuries are not compensable under workers’ compensation law. What result will that have?**
   1. The employees cannot bring their civil action for false imprisonment.
   2. The employees can bring their civil action for false imprisonment.
   3. The restaurant can counter sue for failure of the employees to request permission to sue.
   4. The restaurant must pay for the employees’ psychological counseling.
3. **Do the managers’ actions in this case satisfy the element of “accidental” injuries as required by workers’ compensation law?**
   1. Yes, because the managers were only doing their duty.
   2. Yes, because the employees had waived all rights to strip searches.
   3. No, because the law is clear that strip searching is an accidental cause.
   4. No, because the managers’ actions were clearly intentional and intentional actions are not compensable under workers’ compensation.

**ANSWERS**

CHAPTER 2

True/False

1. False

2. False

3. True

4. False

5. False

6. True

7. False

8. False

9. True

10. False

Multiple Choice

1. A

2. C

3. B

4. B

5. C

6. B

7. C

8. B

9. A

10. A

Short Answers

1. A negligence action is a civil case that seeks to prove that the defendant owed a duty to the victim, the breach of that duty, a causal connection between the purported breach and the resulting physical harm and finally provable damages suffered by the victim.

ONLINE STUDY GUIDE WORKERS’ COMPENSATION

71

2. Product liability assesses liability against a manufacturer, seller, or wholesaler for placing a dangerous or defective product on the market that causes injury or damage. The interesting thing about products liability cases is that, it is not a legal defense for the manufacturer to prove that it did nothing wrong. In fact, a manufacturer can be liable even when the plaintiff can’t show that there was anything wrong with the way that the product was designed. The only thing that a plaintiff has to show is that the product caused an injury.

3. Because a product liability suit is not an action against the employer, modern workers’ compensation law allows the employee to bring two actions: one through the workers’ com-pensation system and the other based on product liability— assuming that the employee’s injuries were caused by a defective product. Workers’ compensation was never intended to replace general tort law; it was only designed to protect employers. If a product injures the employee, the employer will pay the claim just as it would for any other workers’ compensation claim, and the injured employee can still bring a suit against the manufac-turer. As such, product liability suits are an exception to the general rule that an employee cannot sue based on work-related injuries.

4. A worker does not waive all rights when he or she falls under the jurisdiction of the workers’ compensation system. They do waive the right to bring a separate civil action for a work-related injury, but they may still bring suits for intentional torts and product liability cases, among others.

5. The Federal Workers’ Compensation System was created under the authority of the Federal Employees’ Compensation Act, otherwise known as FECA. This Act provides compensa-tion to civilian employees who work in the federal government.

6. COP refers to continuation of pay during an injured employee’s recuperation from illness. This is the federal version of temporary and permanent benefits available under various state systems. Under the federal system, an employee is entitled to receive his or her regular pay for 45 days because of disability or medical treatment.

72 ONLINE STUDY GUIDE WORKERS’ COMPENSATION

7. There are many other federal programs that provide some type of benefits to specific groups. For instance, the Black Lung Benefits Reform Act of 1977 provides coverage for coal miners. There is also the Division of Energy Employees’ Occupational Illness Compensation Act, which provides benefits to employees of the Department of Energy. Other federal programs include Social Security, Medicare, and Medicaid.

8. Under FECA, an employer can be criminally punished for failing to provide medical attention to injured employees. The criminal provisions of FECA are set out in 18 U.S.C. §1922.

9. Medicaid provides benefits based on eligibility requirements. There are 25 different eligibility categories that include income, age, and a few other factors. However, there are five main categories of eligibility. The following people are eligible for Medicaid assistance:

• Pregnant women

• Children

• Adults who meet income limits and have dependent children

• Persons with specific disabilities

• Persons aged 65 and older

Medicare, on the other hand, is a national insurance program for particular groups of people, including:

• Individuals who are 65 years of age or older

• Individuals with disabilities

• Individuals who suffer from kidney failure

Anyone who falls into these categories is automatically covered and will receive medical attention and, more importantly, get their medical bills paid by the U.S. government.

10. Social Security Disability Insurance, or SSDI, is a federal “insur-ance program” for people who are unable to work because of a disability. Like other insurance, individuals only receive benefits if they have paid into the system. According to the Social Security Administration (SSA), a person must have made payments into the system before he or she even qualifies for benefits. After that, SSA has its own formula for determining how much coverage a person is entitled to receive based on work history.

Case Study 1

1. A

2. A

3. B

Case Study 2

1. C

2. B

3. D