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# Dialogue

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# What Constitutes a Workplace Accident?

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Every jurisdiction in Canada has a workers' compensation system that provides benefits and services to workers who sustain a workplace injury or occupational illness.

In some cases, whether an injury qualifies as a workplace injury is easy to determine. There is little doubt a worker who cuts her hand while operating an employer's machine during working hours has sustained a workplace injury. However, whether a workplace injury has been sustained is not as clear if the injury occurred as a result of the worker engaging in horseplay, was intoxicated, or was using the machine after hours for personal use.

## Two-part test

Each provincial workers' compensation program applies the same two part test to determine whether a workplace injury or disease "arose out of and during the course of employment":

1. **Did the accident arise out of employment?** Is the hazard or activity performed by the worker linked to employment, in the sense that it was the result of the conditions, duties or environment of the employment?
2. **Did the accident occur during the course of employment?** Did the injury or illness occur while the worker was at work, performing work or performing an activity that was linked to work? That is, the accident must have occurred at a time and place consistent with the obligations and the expectations of the job.

So long as one element of the test is satisfied the applicable provincial workers' compensation program assumes the second element has also been met, unless proven otherwise.

## Complicating factors

### *Serious and willful misconduct*

As a general rule, except in the case of a serious disability or fatality, a worker is not entitled to benefits or services if the injury or illness is the result of the worker's own "serious and willful misconduct." A finding of "serious and willful misconduct" is often linked to finding the worker has removed herself from employment. Examples include:

- The commission of a criminal act
- Intoxication (when it is the sole cause of the accident)
- Self-harm
- Fighting
- Horseplay
- Transacting personal business or going to places that are not related to work activities

This exclusionary rule is not absolute.

If a worker establishes the conduct giving rise to the injury was consistent with the expectations or conditions of employment, it may be treated as a workplace injury. Each decision is fact specific, and within the realm of workers' compensation rulings it is difficult to identify a reliable "common thread."

### *Travelling*

A worker away from the workplace will generally be deemed in the course of employment if the accident occurs while performing work activities under the control and direction of the employer. For example, a worker injured while delivering product will be covered by workers' compensation.

The worker will not be covered if she is commuting to work or engaged in leisure activities not under the direction of the employer. If a worker decides to go skiing at a conference, she will not be covered in the event of an injury unless she establishes a business purpose for the activity, such as entertaining clients.

### *Fitness facilities*

An injury suffered while exercising at an employer-provided fitness facility is typically not considered a workplace injury. However, in Newfoundland and Labrador, if an employer requires a worker to reach or maintain a specified level of fitness, and the worker suffers an injury at an employer-provided fitness facility, it is considered a workplace injury. An injury suffered at an off-site independent fitness facility is not considered a workplace injury, regardless of employment fitness requirements.

### *Strike activity*

An injury arising out of strike or picketing activity does not constitute a workplace injury. In these circumstances the worker is not carrying out the employer's instructions and is not acting with the consent of, or performing work for, the benefit of the employer. The worker is considered to have removed herself from employment.

## Tips for employers

For employers, reducing the frequency and severity of lost-time injuries can result in enhanced productivity and employee morale, and reduced workers' compensation premiums and surcharges.

Employers can prevent injury and claims by ensuring workers understand workplace expectations. This includes:

- Developing and implementing a clear and transparent policy that prohibits and consistently sanctions willful misconduct and horseplay
- Providing workers with appropriate and ongoing safety education and training
- Keeping records of contraventions and steps taken in response by the employer and worker

In the event of an injury, employers should review the circumstances carefully and thoroughly. A workplace injury should not be assumed until the employer is certain of the facts. If there is reason to question whether the injury arose out of or during the course of employment, the provincial workers' compensation board should be advised and the employer should be prepared to challenge any subsequent findings. ☹

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