

Aba tips article - safety misconduct defenses

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IN, KY & TN: THE ELUSIVE SAFETY-RELATED MISCONDUCT DEFENSE FOR WORKER'S COMP CLAIMS due: Introduction

Apart from fraud, numerous employers would say that the most perplexing and frustrating workers' compensation claims are those whereby an injured worker has been given benefits although they were in violation of a safety rule, not using a provided safety device, drugs or even alcohol during the time of injury (this is collectively referred to as safety Misconduct).

The primary reason why employers get upset in regards to this scenario is due to the high levels of unfairness. In any case, various statutes as well as regulations require employers to create safety rules, provide safety training and devices, and in certain circumstances perform alcohol and drug testing as measures to safeguard employees from illnesses and injuries (Spurlock, 2012). Furthermore, in almost all cases, the employer must maintain and implement the said measures at their own expense.

Safety Misconduct in Kentucky

Statutorily, Kentucky as compared to Indiana and Tennessee provides the minimalistic amount of safety misconduct defense incentives in relation to employer safety rules. Workers compensation in the Kentucky statute provides for only a decrease in compensation benefits in regards to intentional failure to follow a safety rule of an employer (Spurlock, 2012). In addition, the statute also creates an affirmative defense regarding voluntary intoxication.

Numerous employers have a simple safety rule that forbids horseplay. In Kentucky, it is not clear as to how horseplay receives treatment because, in several cases, injuries that involve horseplay are probably not considered to

come out of the employment course, hence making horseplay act as a fully affirmative defense. Furthermore, the rules against horseplay have applied parallel consideration that have seen evaluation of the violation of non-horseplay safety rules is the history of the employers enforcing the rule of horseplay (Spurlock, 2012).

Safety Misconduct in Indiana

Statutorily, the workers compensation of Indiana provides for an affirmative defense, barring compensation for all forms of safety misconducts (Spurlock, 2012). In addition, the statute of Indiana provides for full affirmative defense for failing to obey a safety rule or usage of a safety appliance.

Safety Misconduct in Tennessee

Regarded as a minority state in providing workers' compensation of misconduct affirmative defense (Spurlock, 2012). Tennessee's statute also provides for full affirmative defenses particularly in regards to illegal drug use or intoxication and refusal or failure in using a safety device.

Conclusion

In summary, even though they act as a full defense or simply decrease benefits, safety violation rule defenses have to use a safety device image to distinguish challenges within the analyzed jurisdictions. Furthermore, employers within all three states must demonstrate that they have the consistency in enforcing usage and safety rules of the safety devices in question so that the defense stands a chance of survival. In addition, all three states have had court cases regarding safety misconducts.

Reference

Spurlock, B. S. (2012). Workers' Compensation and Employers' Liability Law

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DEFENSE FOR WORKERS'S COMP CLAIMS: 1, 9-19. Retrieved April 28, 2014
from https://learn.eku.edu/bbcswebdav/pid-6244461-dt-content-rid-3739567_2/courses/OSH492_23732_S14/2012%20ABA%20Tips%20Newsletter%20-%20Safety%20Misconduct%20Defenses.pdf