

## **I Want to Sue My Employer**

My co-worker backed into me with a hi-lo, breaking my leg. My employer took a safety guard off a saw, and now, I'm missing two fingers. My supervisor made me lift more than one person safely should, so I injured my back. The company I work for doesn't care about maintaining its equipment properly, and now, I'm injured because of it. I should be able to sue my employer for its negligence, right?

The answer is almost always no. As workers' compensation attorneys, people ask us daily about suing their employers. They are often surprised and upset when we tell them that Michigan's Workers' Disability Compensation Act protects their employers from lawsuits based on negligence. The law also protects your co-workers from negligence lawsuits.

Workers' compensation cases are not like other personal injury cases. Since 1912, Michigan has had a workers' compensation law that applies to personal injuries at work. In the early 1900s, as Michigan industrialized, workplace injuries and lawsuits arising from them increased. Often, however, it was difficult for injured workers to prove their cases, so severely injured workers did not receive medical care or help with lost wages. Injured workers that won in court often had difficulty collecting their judgments because employers usually did not carry insurance and would simply declare bankruptcy. The number of lawsuits also threatened to overwhelm Michigan's court system. So Michigan's legislature fixed the problem by creating a separate no-fault system for dealing with workplace injuries. This means that in most cases it is irrelevant whether an employer or employee is at fault for an injury.

Workers' compensation benefits are usually the only legal remedy that people can claim for a workplace injury. These benefits are the same regardless of who was at fault for the injury. You cannot get additional benefits because your employer was at fault for an injury, and you do not get fewer benefits if your negligence caused your injury.

There are three main ways out of the workers' compensation system:

(1) If your employer did not carry workers' compensation insurance coverage when it was supposed to, your employer loses the protection of the Workers' Disability Compensation Act. You can sue your employer in circuit court, and your employer loses the right to claim certain defenses. For example, in one case, a waitress was injured while working for a restaurant that did not carry workers' compensation insurance. The Michigan Court of Appeals held that the waitress could pursue a negligence claim against the restaurant, and the restaurant could not defend the lawsuit by claiming that the waitress was negligent. The Court of Appeals also said that the waitress could pursue workers' compensation benefits through the workers' compensation system, although if she did that, she could not claim those benefits as damages in a negligence lawsuit. In other words, you cannot get a double recovery.

(2) If a third party—someone besides your employer or co-workers—caused your injury, you can sue the third party because that person or entity is not protected by the Workers' Disability Compensation Act. This often happens with workplace motor vehicle accidents that are caused by another party's negligence. For example, if you were driving a vehicle for your

employer, and another driver ran a stop sign, injuring you, you can claim workers' compensation benefits from your employer and no-fault benefits from its auto insurer, and you can bring a negligence claim against the driver that hit you. For injuries caused by machinery, you may be able to pursue a product liability case against the machine manufacturer.

We regularly receive calls from staffing company employees, claiming that they were injured because of negligence by the business where they were assigned to work. It might seem like the business should be considered a third party. But under the Workers' Disability Compensation Act, staffing company employees are treated the same as the employees of the business where they are working. The business is not considered a third party, so it is protected from negligence lawsuits. The reverse is also true. If you are injured by a staffing company employee's negligence, you cannot sue the staffing company or its employee.

(3) If you can prove that your employer intended to harm you, you can get out of the workers' compensation system. This is very difficult to do. It is not enough to show that your employer ordered you to do something dangerous. You must show that your employer intended to cause your injury by showing that it had actual knowledge that your injury was certain to occur and that it willfully disregarded that knowledge. The most common example is a supervisor assaulting an employee. Most cases are more complicated. For example, in one case, a foundry worker was ordered to load scrap metal containing aerosol cans into a furnace. He was not given any protective gear. After a minor explosion in the furnace, he called his supervisor about the problem, and his supervisor told him to continue loading the furnace. A more significant explosion occurred, badly burning the worker. The Michigan Court of Appeals allowed the worker to pursue an intentional tort lawsuit against the employer because it was possible that a jury might find that the supervisor had actual knowledge that the worker was certain to be injured and willfully disregarded that knowledge.

While each of these three scenarios is relatively rare, you should consult an attorney to see if any of them may apply to your situation.

If your employer refuses to pay or stops paying workers' compensation benefits, you can file an application for hearing with the Workers' Compensation Agency, which handles all disputes for workers' compensation benefits. Filing an application for hearing is the equivalent of filing a lawsuit in the workers' compensation system, so it is unwise to do it without a lawyer. If you think that your employer is not paying workers' compensation benefits that you are entitled to, please contact one of the attorneys at Ryan, Podein, Postema & Westgate, P.C. for a free consultation.