

# Instructor's Manual to Accompany Workers' Compensation Law

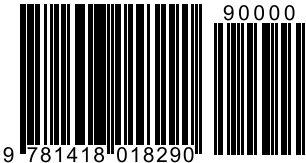


Neal R. Bevans

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# Introduction to Workers' Compensation

## CHAPTER

# 1

### CHAPTER OUTLINE

- I. Introduction: What Is Workers' Compensation?
  - A. The Basic Premise of Workers' Compensation
  - B. A Short History of Workers' Compensation
  - C. Exclusiveness of Remedy
  - D. Do Workers' Compensation Statutes Violate the U.S. Constitution?
- II. Determining Who Is Covered by Workers' Compensation Statutes
  - A. Who Is Covered Under Workers' Compensation?
  - B. Persons Who Are Not Covered Under Workers' Compensation
- III. Workers' Compensation Benefits
  - A. Medical Expenses
  - B. Income During Injury/Illness
  - C. Death Benefits
  - D. Burial Benefits
  - E. Determining the Amount of Benefits
  - F. Special Protections for Firefighters and Law Enforcement Officers
  - G. Denying Benefits for Claims of Fraud

### ANSWERS TO CASE QUESTIONS

1. **According to the court, what improper activities did the employer carry out in this case?**

The court states that the employer, Gould, knowingly misrepresented to its employees that the work conditions were safe and that the safety gear provided to employees would protect them from the hazardous conditions.

**2. Is it significant to the decision that Gould intentionally exposed its employees to dangerous airborne elements?**

The court views it as significant that the employer deliberately lied to its employees and even made the conditions worse by misleading employees about possible health effects.

**3. How does this court explain the exclusive remedy provided by workers' compensation?**

The court explains that the exclusive remedy provision works to protect both employers and employees, as long as the employer is not willfully misleading its employees.

**4. How do intentional acts by employers affect workers' compensation coverage?**

Employers are not protected under workers' compensation laws when they intentionally injure employees.

**5. Explain the plaintiff's "involuntary servitude" argument.**

The court states that this argument is not effective, because previous cases have ruled that the Thirteenth Amendment applies to slaves, not workers seeking specific remedies through the court system.

## ANSWERS TO REVIEW QUESTIONS

**1. Explain the basic arrangement in a workers' compensation scheme.**

Under workers' compensation, employees give up their right to sue in a civil court for injuries they receive on the job, while being guaranteed some benefits. On the other hand, employers must pay into the system and keep it funded, while receiving the benefit of not facing civil suits for injuries.

**2. What is meant by "exclusive remedy" as that term applies to workers' compensation?**

Exclusive remedy means that workers' compensation statutes specifically bar employees from bringing civil actions for injuries against employers. Instead, they must bring their claim through the workers' compensation system or not at all.

**3. Do workers' compensation statutes deprive employees of important constitutional rights? Explain your answer.**

Courts have ruled that although the exclusivity arrangement of workers' compensation statutes does abridge an important right, the new rights conferred by the statutes outweigh the rights lost.

**4. What types of monetary benefits are available to injured employees under workers' compensation statutes?**

Workers' compensation benefits include:

- Medical expenses
- Income during the injury/illness
- Death benefits
- Burial benefits

**5. When did workers' compensation statutes originate in the United States?**

Workers' compensation movements began in the early part of the twentieth century, as a direct response to the Industrial Revolution and the problems that it spawned.

**6. Why was there a need for workers' compensation statutes in the United States?**

Prior to the creation of workers' compensation statutes, an injured worker's only recourse was to sue the company for his medical bills and lost wages. The state of tort law at the time heavily favored employers and the result was that an injured employee would often receive nothing for an on-the-job injury.

**7. What was the state of law for injured employees prior to the creation of workers' compensation statutes?**

Prior to the creation of workers' compensation statutes, an injured employee's only recourse to receive reimbursement for on-the-job injuries was to bring a civil suit against the employer.

**8. Who is responsible for paying into the workers' compensation fund from which employees draw their compensation?**

As part of the system, employers must pay into the workers' compensation system to fund it and provide benefits for injured workers.

**9. What is a burial benefit?**

Many states provide a maximum benefit of \$6000 for an employee's funeral expenses under the burial benefit provisions of a workers' compensation insurance plan.

**10. What is the function of a Workers' Compensation Board?**

One of the responsibilities of the state Board of Workers' Compensation is to determine the extent of the employee's injuries.

**11. Prior to the enactment of workers' compensation statutes, what defenses would employers use in order to avoid paying for employee injuries?**

Employers could use the following defenses:

- Assumption of the risk (that the employee had assumed the risk by accepting employment)
- Negligence of the employee (that the employee's own negligence caused the injury and therefore the employer was not liable)
- Intentional actions by third parties (that some person, other than the employer, had caused the employee's injuries, thus relieving the employer of liability)

**12. What types of employees are covered by workers' compensation statutes?**

The following employees are covered under most states' workers' compensation laws:

- Employees who are employed by for-profit businesses
- Employees who work for counties and towns and work in "hazardous" areas
- Most public school teachers, with some important exceptions
- Employees who work 40 or more hours per week

- Seasonal or agricultural workers who earn \$1200 or more
- Any other employee deemed covered by the state Board of Workers' Compensation

**13. What types of workers are not covered by workers' compensation statutes?**

Under most states' laws, the following individuals do not fall under the protection of workers' compensation:

- Members of the clergy
- Teachers at religious institutions
- Members of the merchant marines and other sea-going professions
- Railroad workers
- Federal employees
- Casual laborers
- Employees of foreign governments
- Sole proprietors and other small business owners

**14. What is the income benefit under workers' compensation?**

The workers' compensation income benefit provides for payments to an injured employee during the period that he or she is unable to work because of a work-related injury or illness. These payments are usually a percentage of the employee's total income.

**15. Explain the significance of this chapter's Case Excerpt.**

The significance of the case is that it shows that even in situations where there are questions about the credibility of the employer, injured workers must still pursue their claims through the workers' compensation system.

## **ANSWERS TO QUESTIONS FOR REFLECTION**

Is there still a need for workers' compensation statutes? Has the state of law progressed to a point where employees and employers could easily be absorbed into the civil law system?

Answers to these questions will vary by state and student perceptions about the effectiveness of the civil justice system to absorb these new cases.

## **SUGGESTED WEB EXERCISES**

Go online and locate your state's web site. Detail what information can be found there. Are there any other sites that discuss your state's workers' compensation system? Does the state site, or other site, offer online forms for claimants? Does it provide media presentations, such as video or podcasts for those interested in the topic?

## **PRACTICAL APPLICATIONS**

Locate your state's workers' compensation web site. What information is available on this site? Does the site provide forms and other information on workers' compensation hearings?

These answers will vary depending on state.

# Federal Workers' Compensation and Tort Law in Workers' Compensation

CHAPTER

2

## CHAPTER OUTLINE

- I. Introduction to Federal Programs
- II. Common-Law Influences on Workers' Compensation
  - A. Negligence
    - 1. Duty
      - a. Assumption of the Risk
  - B. Product Liability
  - C. Intentional Torts
    - 1. Injuries Caused by Coworkers
- III. Federal Workers' Compensation
  - A. Federal Employees' Compensation Act
    - 1. The Federal Workers' Compensation System
    - 2. A Short History Lesson on Federal Workers' Compensation
    - 3. Qualifying Under FECA
    - 4. Exceptions to Federal Workers' Compensation
  - B. Federal Workers' Compensation Benefits
    - 1. Benefits Under the Federal System
      - a. Continuation of Pay (COP)
  - C. Filing a Federal Workers' Compensation Claim
  - D. Criminal Sanctions Under FECA
- IV. Other Federal Programs That Provide Coverage for Employees
  - A. Federal Black Lung Program
  - B. Social Security
    - 1. History of Social Security



2. Social Security Disability Insurance (SSDI)
3. Supplemental Security Income (SSI)
- C. Medicare and Medicaid
  1. What Is Medicare?
  2. What Is Medicaid?
    - a. Qualifying for Medicaid
  3. Comparing Medicare and Medicaid
- D. Coordinating Benefits on the State and Federal Level
  1. Fraud
- E. Becoming an Advocate for Others in Social Security and Medicare Hearings
  1. Compensation
- F. The Defense Base Act
  1. Worker Benefits Under DBA
    - a. Disability Payments
    - b. Medical Benefits
    - c. Death Benefits
  2. Who Is Covered Under DBA?

## ANSWERS TO CASE QUESTIONS

1. **For whom did Stuto work?**  
Stuto was a mailhandler for the U.S. Postal Service.
2. **What was the nature of his injury?**  
He received a disabling lower back injury while on the job.
3. **What did the doctors of the Department of Labor determine about Stuto's condition?**  
Both doctors of the Department of Labor determined that Stuto will be able to do sedentary work.
4. **According to the court, are disability benefits a property right?**  
The court states that disability benefits are clearly a property right.
5. **Explain the basis of Stuto's claim for intentional infliction of emotional distress.**  
Stuto claims that by dismissing his claim, the Workers' Compensation Board engaged in outrageous conduct designed to cause him severe emotional distress. The court disagreed with his position.

## ANSWERS TO REVIEW QUESTIONS

1. **Explain the basic elements of the negligence action.**  
Any negligence action involves the proof of 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.

**2. What is product liability?**

Product liability is a theory of law that allows injured people to recover for the harm caused by a defective product.

**3. How would a product liability lawsuit be brought by an injured worker?**

A product liability claim could be brought against an employer who required the worker to use equipment that was faulty and caused an injury.

**4. Injured workers do not waive their rights to bring intentional tort actions. What does this mean?**

Although workers in the workers' compensation system cannot bring civil suits against their employers for on-the-job injuries, this prohibition does not apply to intentional wrongdoing by employers or other employees. When they engage in intentional physical attacks, that is not considered a workers' compensation claim, and therefore, the injured worker can bring a civil suit.

**5. Can an injured employee sue a coworker? Explain your answer.**

An injured worker can sue a coworker for an intentional action by the coworker that injures the worker.

**6. When was the federal workers' compensation system created?**

The federal workers' compensation system was created in 1916.

**7. What social pressures were brought to bear in the creation of the Federal Employees' Compensation Act (FECA)?**

Because of great social unrest during the first part of the twentieth century, more and more workers began complaining about working conditions and were demanding not only better conditions but also some kind of safety net for injured workers.

**8. How does the federal workers' compensation system award temporary benefits?**

Federal benefits are paid at a rate of two-thirds of the employee's normal salary, unless the employee falls into the category of traumatic injury. In that case, he or she will receive full payments for at least 45 days, followed by a payment of two-thirds of the salary for the rest of his or her illness.

**9. What is continuation of pay?**

Continuation of pay 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.

**10. What are examples of other federal programs that provide coverage for individuals who are injured?**

Other federal programs that provide benefits include the Longshore and Harbor Workers' Compensation Act of 1927, the Federal Black Lung Program, Social Security, Medicare, and Medicaid.

**11. What does it mean when an employer controverts continuation of pay?**

When a company challenges continuation of pay, it controverts the payments. The determination of whether the payments should continue lies with the administrative board that oversees the FECA (Federal Employee's Compensation Act) system.

**12. What is a Form CA-1?**

A CA-1 is a written report detailing the facts surrounding the injury.

**13. Does the Federal Employees' Compensation Act provide criminal sanctions? Explain.**

Yes, FECA does provide criminal sanctions. It criminalizes actions such as willfully failing or neglecting to make any of the reports required under the program or knowingly filing a false report.

**14. What is the Federal Black Lung Program?**

The Federal Black Lung program provides a benefit system to coal miners who have contracted pneumoconiosis (black lung disease); they are provided with monthly payments for both income and medical needs.

**15. Explain the development of Social Security.**

The national Social Security program came into existence in 1935 as part of Franklin Roosevelt's New Deal. It was a program designed to provide a safety net for individuals who had lost, or had never provided for, their own retirement.

**16. What is Social Security Disability Insurance?**

Social Security Disability Insurance, or SSDI, is a federal "insurance program" for people who are unable to work because of a disability.

**17. Explain the function of Medicare.**

Medicare 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.

**18. How does Medicaid compare to Medicare?**

Although the programs sound similar, they are actually quite different. A person might be able to qualify for both, depending on circumstances.

**19. How does a person qualify for Medicaid?**

There are 25 different eligibility categories that include income, age, and a few other factors. The five main categories of eligibility include:

- Pregnant women
- Children
- Adults who meet income limits and have dependent children
- Persons with specific disabilities
- Persons age 65 and older.

**20. What agency is responsible for coordinating benefits a person receives on the state and federal level?**

The Centers for Medicare & Medicaid Services is a federal agency that is responsible for coordinating the benefits that a person can receive under state and federal programs.

**21. Give an example of Medicaid fraud.**

A person can be prosecuted for Medicaid fraud for receiving benefits he or she is not entitled to receive or for billing for services that were never performed.

**22. Can paralegals represent individuals in Medicare and Medicaid hearings? Explain.**

Paralegals are allowed to represent individuals at Social Security, Medicaid and Medicare hearings and can be paid for doing so.

**23. In this chapter's case excerpt, was the injured employee successful in his claim concerning the intentional tort of infliction of emotional distress? Why or why not?**

No, he was not successful. He failed to prove that the denial of his claim rose to the level of intentional infliction of emotional distress.

## ANSWERS TO QUESTIONS FOR REFLECTION

1. Should state systems be brought more in line with the federal approach? Why or why not?  
Answers will vary depending on the student.
2. Based on what you learned in Chapters 1 and 2, would a person be better off covered under a federal program or a state program? Explain your answer.  
This is a judgment call. A student might easily be able to justify either position.

## SUGGESTED WEB EXERCISES

Go to the FECA web site and locate a blank CA-1 form. What type of information must be entered into this form? How does it compare with your state's required reports?

## PRACTICAL APPLICATIONS

Go to the U.S. Department of Labor, Employment Standards Administration, which administers the Federal Employee's Compensation Act <http://www.dol.gov/esa> and click on the Search box in the upper right hand corner of the screen and then answer the following questions:

- How many federal employees are provided benefits under FECA?
- What is the percentage of overhead in relation to benefits received by federal employees?
- How do the costs of the FECA program compare to those of private or state funded systems?

Answer:

1. FECA provides benefits to 3 million federal employees
2. Under the federal system, overhead is 4% of benefits
3. The federal system has the lowest costs of any system, averaging 1.8% compared to 2.3% found in private and state funded systems.