Workers’ Compensation
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Text:

The majority of assignments for class are from the casebook. Supplemental readings may be distributed on occasion, but students will not need to purchase additional texts.

Class Goals & Objectives:
The primary objective of this course is to familiarize students with workers’ compensation law and enforcement, focusing on federal law with some discussion of the Minnesota Act and the Wisconsin Act. Generally, the course will deal with the theory of workers' compensation; liability of employers for work-related injuries to employees employee/employer relationships; classification of risks covered by the compensation acts; general concepts relating to disability and death benefits; and administration of the workers’ compensation laws.

Attendance and Laptop Policy:
Please make every effort to attend class and to arrive at class on time. The Registrar's attendance sheet will be circulated for initialing during each class. Missing more than 2 classes in this course is regarded as excessive absence. Laptops may be used in the classroom for any and all purposes related to the class.

Testing & Grading:
There will be a midterm exam that will constitute 20% of the final grade and a final exam that will constitute 80% of the final grade. The midterm will be given in class on October 10 during a 50 minute period and the final will be a self-scheduled two-hour exam during the designated finals weeks.

Class Schedule:
Fridays, 11:00 a.m. – 1:50 p.m. in Room 06
August 22 – December 5, 2008*
*Please note that no class will be held during the weeks of the University Convocation (September 5), fall recess (October 17) and the Thanksgiving break (November 28). Due to these breaks, we will have class both days of the make-up period, on December 4 and 5, 2008.

Assignments:
Assignment 1. August 22: Casebook pages 1-54
Chapter 1: Employees’ Remedies Prior to and Apart from Workers’ Compensation
For discussion:
What is the rationale behind the development of the workers’ compensation system?
What common laws have applied to work-related injuries over the years?
What legislation has been enacted with the goal of worker and/or employee protection?
How does OSHA come into play?
Is the workers’ compensation system, in theory, the most efficient way to protect worker and business interests?

Cases:
James Murray v. South Carolina (S.C. 1841) p. 7
Armstrong v. Kansas City Southern Railway Company (5th Cir. 1985) p. 23
Department of Public Health, Division of Risk Management v. Wilcox (Fla. 1989) p. 33
Breen v. Carlsbad Municipal Schools (N.M. 2003) p. 37

Assignment 2. August 29: Casebook pages 55-107
Chapter 2: The Compensation Principle
For discussion:
How and why did the compensation movement emerge?
What, generally, are the benefits of a “no-fault” system?
Are workers’ constitutional rights adequately protected under the system?
What is the concept of “social insurance” in workers’ compensation?
Should we be complacent with the current system of compensation for work-related injuries?

Cases:
New York Central R.R. Co. v. White (N.Y. 1917) p. 56

Chapter 3: The Employer-Employee Relationship
For discussion:
Are limits on liability consistent with the social welfare goals of workers’ compensation?
Is the definition of who is an employee under workers’ comp law clear?
How are the social and economic objectives underlying workers’ comp legislation relevant to the determination of employment status?

Cases:
Johnson v. City of Albia (Iowa 1927) p. 77
Aspen Highlands Skiing Corporation v. Apostolou (Co. 194) p. 82
Marcum v. State Accident Ins. (Ore. 1977) p. 90
Hanson v. Transportation General, Inc. (Conn. 1998) p. 94

Chapter 3, continued, Sec. 4: Statutory Treatment of Particular Employment
For discussion:
Should a worker be able to sue an employer who is not liable for workers’ comp benefits under tort law?
Should corporate officers be able to elect or reject workers’ comp coverage?
Should corporate executives with stock holdings be treated as employees or employers?
Should an employer be able to discharge an at-will employee in retaliation for a workers comp claim?
Cases:
Sandburn v. Hall (Ind. 1951) p. 108
Wedec v. Unocal Corporation (Cal. 1997) p. 123
National Automobile v. Industrial Acc. (Cal. 1947) p. 131
Hirsch v. Hirsch Brothers (N.H. 1952) p. 135
Frampton v. Central Indiana Gas (Ind. 1973) p. 139

Chapter 4: Injuries Occurring “Within The Course” of Employment
For discussion:
Should employees be covered by workers’ comp benefits for injuries sustained at employer-sponsored social events?
Should an employee who assists a co-worker outside the course of employment be covered?
Should employees be covered under workers’ comp when suffering injury on work premises while performing non-prohibited personal acts?
What if an employee is “on-call?”
Should employees who take a lunch break off premises be covered?
Cases:
Shunk v. Gulf American Land (Fla. 1969) p. 147
Taylor v. Ewing (Penn. 1950) p. 151
Leckie v. H. D. Foote Lumber (La. 1948) p. 154
Pacheco’s Dependents v. Orchids of Hawaii (Hawaii 1972) p. 160

Chapter 4, continued, Sec. 4.: Injuries Caused by Horseplay among Co-Workers
For discussion:
Should a prank perpetrated by a co-employee be recognized as an incident of employment?
Should injuries be compensated if they are caused by the willful misconduct of an employee?
Should intoxication disqualify an employee from receiving benefits?
If an accident arises either out of the employment or occurs during the course of it, is a resulting injury always compensable?
Cases:
Burns v. Merritt Engineering (N.Y. 1951) p. 169
Carey v. Bryan & Rollins (Del. 1955) p. 174
Kaplan v. Alpha Epsilon Phi Sorority (Minn. 1950) p. 190
Strother v. Morrison Cafeteria (Fla. 1980) p. 197

Chapter 5: Injuries “Arising Out Of” the Employment
For discussion:
Should recovery be permitted for injuries caused by “fortuitous forces?”
How far should the potential risk doctrine extend with regard to workers’ comp compensability?
Cases:
Davis v. Houston General Ins. (Ga. 1977) p. 206
Assignment 5.  September 26:  Casebook pages 224 – 275
Chapter 5, continued, Sec. 5: Injuries Caused by Fights and Assaults among Co-Workers
For discussion:
Should it matter in terms of compensability if a fight at work that results in injury is “personal” in nature as opposed to job-related?
Should it matter who started the fight?
Should all personally motivated physical attacks be excluded from coverage?
Should injuries incurred in a rescue attempt while on the job always be compensated?
Cases:
Hartford Accident Co. v. Cardillo (D.C. 1940) p. 224
USCA v. Martin Marietta Corp. (Col. 1988) p. 230
Weiss v. City of Milwaukee (Wis. 1997) p. 235
Checker Taxi Co. v. Industrial Commission (Ill. 1965) p. 244
In Re Leblanc’s Case (Mass. 1955) p. 247

Chapter 6: Accident and Occupational Disease
For discussion:
How do we define “accident” for purposes of workers’ compensation claims?
What is a workable standard of proof regarding injury based on repetitive trauma?
Does it make sense to allow compensation in disease cases?
Cases:
Mathews v. R. T. Allen & Sons (Me. 1970) p. 253
Peoria County Nursing Home v. Industrial Commission (Ill. 1985) p. 259
Connelly v. Hunt Furniture Co. (N.Y. 1925) p. 267
City of Nichols Hills v. Hill (Okla. 1975) p. 269

Assignment 6.  October 3: Casebook pages 276 – 331
Chapter 6, continued, Sec. 3: Occupational Disease
For discussion:
What is a workable statutory definition of “occupational disease?”
How should workers’ comp courts allocate costs in disease cases involving both occupational and non-occupational causal factors?
Should we leave the issue of causation of heart attacks to expert testimony in determining workers’ comp liability?
How do psychological disorders affect compensability under workers’ compensation laws?
Cases:
Booker v. Duke Medical Center (N.C. 1979) p. 277
Olson v. Federal American Partners (Wyo. 1977) p. 287
Lancaster v. Gilbert Development (Utah 1987) p. 309
Assignment 7. October 10: Prepare for 50-minute in-class midterm exam + casebook pages 332 – 376 for discussion after the exam.
Chapter 7: Effect of Causes and Conditions Independent of the Work Relation
Accident and Occupational Disease

For discussion:
How do we define and take into account pre-existing conditions?
Does contributory negligence ever bar recovery under workers’ comp laws?
Can an employee recover for adverse medical developments that follow a work-related injury or transpire during its treatment?
How do we determine whether there has been a new accident versus an aggravation of a pre-existing injury?
What criteria should courts use to determine whether or not a medical procedure is “reasonably required” when an employee has refused recommended medical treatment?
How far should the doctrine of compensable consequences extend?
Cases:
Braewood Convalescent Hospital v. Workers’ Compensation (Cal. 1983) p. 333
Williams Construction v. Garrison (Md. 1979) p. 341
Commonwealth v. Lindon (Ky. 1964) p. 360
Food Distributors v. Estate of Ball (Va. 1997) p. 368

Assignment 8. October 24: Casebook pages 377 – 435
Chapter 8: Compensation for Non-Fatal Injury

For discussion:
Who should be the ultimate decision-maker in the selection of a treating physician related to a work injury?
What do courts consider in evaluating a claim for rehabilitation benefits?
What should be considered in the determination of earning capacity?
What is the rationale for allowing or disallowing compensation for disfigurement as the result of a work injury?
How does the maximum medical improvement standard impact benefits?
What if successive injuries produce a total disability greater than the sum of the individual effects of the two or more injuries?
Cases:
Fletcher v. Dana Corporation (N.C. 1995) p. 393
Karr v. Armstrong Tire & Rubber (Miss. 1953) p. 401
Bishop v. Town of Barre (Vt. 1982) p. 406
Chapter 9: Death Benefits
For discussion:
Why are the purposes of providing benefits in cases of death from work injury?
What is a fair way to determine dependency?
What about same-sex union death benefit claims?
Who is a “member of the family” in terms of work-related death benefit compensation?
Cases:
Spalding County Commissioners v. Tarver (Ga. 1983) p. 443
Steven Lee Enterprises v. Varney (Ky. 2000) p. 454
Duni v. United Technologies Corporation et al. (Conn. 1996) p. 467

Assignment 10. November 7: Casebook pages 479 – 539
Chapter 10: Administration of Workers’ Compensation Laws
For discussion:
Is the administrative workers’ comp system set up to provide the type of help that injured workers’ need?
Do the relaxed rules of evidence make sense in the workers’ comp setting?

Chapter 11: The Exclusive Remedy Doctrine and the Third Party Suit
For discussion:
What are the pros and cons of the exclusive remedy doctrine as it exists in workers’ comp?
Does the exclusion of intended injuries and sexual harassment claims seem justified?
Cases:
Hyett v. Northwestern Hospital (Minn. 1920) p. 501
Travis v. Dreis and Krump Manufacturing (Mi. 1996) p. 505
Byrd v. Richardson-Greenshields Securities (Fla. 1989) p. 518
Smothers v. Gresham Transfer, Inc. (Ore. 2001) p. 527

Assignment 11. November 14: Casebook pages 539 – 591
Chapter 11, continued, Sec. 3: Third Party Actions: Who Is a Third Party?
For discussion:
What are the rationales behind the dual capacity doctrine and the concept of dual persona?
What are the subrogation and other rights of employer and employee in third party actions?
Why should or shouldn’t a third party tortfeasor be entitled to contribution from a negligent employer?
Cases:
Castleman v. Ross Engineering (Tenn. 1997) p. 546
Schonberger v. Roberts (Iowa 1990) p. 553
Chapter 12: **Conflict of Laws**

For discussion:

What are the choice of law considerations when an out-of-state injury occurs?

How might the “full faith and credit” requirement of the Constitution come into play in a state’s workers’ comp choice of law rule?

How is “localization” defined under Minnesota’s “business localization test?”

Case:

Williams v. The Port Authority of New York and New Jersey (N.J. 2003) p. 572

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**Assignment 12. November 28: Casebook pages 591 – 613**

Chapter 12, continued, Sec. 2 - 8

For discussion:

What are the due process considerations when an injury occurs to an employee of an out-of-state employer?

What are the requirements that must be satisfied for a worker to come within the coverage of Longshore and Harbor Workers’ Compensation Act?

What is the Wilkes three part test for determining seaman status under the Jones Act?

Does FELA always preempts claims under state workers’ compensation laws involving injury or death of a covered railway worker?

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**Assignment 13. December 4: A Minnesota Law Summary** (Supplemental Handout available on TWEN)

For discussion:

What benefits are available in Minnesota?

How do supplementary benefits work?

What were the significant workers’ compensation legislative changes in 2002?

Do Minnesota’s compensation rates tend to benefit employers or employees more?

What are the significant concerns with workers’ comp primary liability determination?

What is a Gillette injury?

How does the Special Compensation Fund work?

Why did Minnesota’s workers’ comp claim rate fall in the 1990s?

Facts and figures: what are the most common types of claims and how do claims in Minnesota break down by industry?

What’s the lingo like? (From ADR to NOIDs to QRCs)

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**Assignment 14. December 5: A Wisconsin Law Summary and Workers’ Comp and Sports** (Supplemental Handouts available on TWEN), and a final exam focus study sheet will be distributed and discussed

For discussion:

What benefits are available in Wisconsin?

How are benefits calculated in WI?

How do supplementary benefits work?

How has WI workers’ compensation law changed over the years?
What is the process involved in making amendments to the WI comp laws? 
Do Wisconsin’s compensation rates tend to favor employers or employees? 
How are PPD payments determined and administered in WI?