

# Injured At Work: What You Should Know

By Scott Callahan

We've all heard or read about the rise in worker injuries in Texas because of the oil and gas boom. But injuries can happen in any workplace setting. Would you know your rights and what to expect if you were injured on the job?

In Texas, private employers get to decide if they want to carry workers' compensation insurance or not. So, if you get injured on the job, your rights will differ greatly based on whether your employer decided to pay for workers' comp coverage. While that decision will affect what medical care you can receive and who pays, the most significant difference is whether you still have the right to sue the employer for negligence, and to prevent it from happening again to others.



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For employers who carry workers' compensation, the insurance pays employee medical expenses and a portion of lost wages in case of workplace injury.

However, many businesses opt out of the program, and assume the risk if their workers are injured on the job. They also avoid expensive insurance premiums. Some employers may provide a private insurance plan, while others may not have any employee injury plan in place.

## **Injury when employer has no workers' comp**

As a rule, you have the right to sue the employer if the business doesn't carry workers' comp insurance. And that right exists even if the employee's own negligence played a part in the injury.

An employer not protected by workers' comp insurance faces a potentially large financial hit from a work-related injury lawsuit. If the employer is deemed to be at least 1 percent negligent, the law says the business is 100 percent responsible. The employer also gives up "common law defenses," meaning the company cannot even argue that the employee also was at fault, or that other employees caused the injury, or that the employee knew of the danger and voluntarily accepted it.

Any employer without workers' comp is required to provide written disclosure to each new employee, post the non-coverage disclosure throughout the workplace, and file an annual notice with the Texas Department of Insurance.

## **Injury when employer does have workers' comp**

On the flip side, here's what happens if you are hurt on the job and your employer *does* carry workers' comp insurance: You cannot sue your employer for basic negligence. Your injury claim falls within the workers' comp system, and issues like medical expenses and lost wages are handled within that administrative system.

Workers' compensation pays medical bills and some lost wages for on-the-job injury or ailments caused by workplace conditions. Benefits are based on the type and severity of the injuries. The employee also is paid a portion of lost wages, and there are death and burial benefits for the family if the worker dies.

Workers' comp doesn't cover self-inflicted harm, or injuries resulting from horseplay or intoxication. It also doesn't cover injury in the workplace caused by someone else who is unrelated to the job, such as a domestic dispute that carries over to the job site.

There is a very important exception to the workers' comp rule barring a lawsuit, however: If the employer was grossly negligent and the worker was killed, then the employee's spouse and children have the right to sue despite workers' comp coverage.

No one wants to think about the risks they may face every day. But when it comes to your job and family, it's important to know whether your employer has insurance and just how that may affect you.

*The information in this column is not intended as legal advice, but to provide a general understanding of the law. Readers with legal issues, including those whose questions are addressed here, should consult attorneys for advice on their particular circumstances.*

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