

It's No Accident: Workers' Compensation Act Recovery Bars Civil Tort Claim

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By: [Jessica Bell](mailto:jbelle@heyloyster.com), jbelle@heyloyster.com

On March 8, 2016, the Appellate Court, First District, issued a decision discussing the application of the exclusive remedy provisions of the Workers' Compensation Act in claims alleging intentional torts. In *Locasto v. City of Chicago*, 2016 IL App (1st) 151369, a fire department employee (Locasto) filed a civil claim seeking damages for an intentional tort resulting in injuries. Locasto claimed the defendants intentionally injured him by forcing him to engage in strenuous physical exercise with minimal water breaks during firefighter paramedic training, causing him to experience dehydration and acute kidney failure.

In addition to his civil suit, Locasto filed a workers' compensation claim under the Illinois Workers' Compensation Act (Act). The arbitrator concluded the injuries "arose out of" and "in the scope of" his employment with the City and awarded both medical and indemnity benefits.

After the workers' compensation award became final, the employer moved for summary judgment in the civil case, arguing the receipt of workers' compensation benefits barred any recovery in a civil suit for an intentional tort and, in any event, that there was no evidence the defendants' acts were intended to injure him.

Looking at the Act's exclusive remedy provisions, section 5(a) prohibits a "common law or statutory right to recover damages from the employer ... for injury or death sustained by any employee while engaged in the line of his duty as such employee, other than the compensation herein provided." 820 ILCS 305/5(a). Section 11 states that compensation under the Act "shall be the measure of the responsibility of any employer." *Id.* at §11. To escape the preclusive effect of these provisions, an employee must prove the injury: (1) was not accidental; (2) did not arise out of his employment; (3) did not occur in the course of the employment; or (4) was otherwise not compensable under the Act. *Fregeau v. Gillespie*, 96 Ill. 2d 479, 483 (1983).

Locasto opposed the summary judgment, arguing the exclusive remedy provisions did not bar his claim because his injuries were not accidental. The court pointed out that collecting workers' compensation benefits on the theory that the injury was accidental and, thus, compensable was wholly inconsistent with subsequently asserting that the exclusive remedy provision was inapplicable because the injury was not accidental. Because Locasto was talking out of both sides of his proverbial mouth, the court granted the motion for summary judgment.

Overall, the court's decision in *Locasto*, while favorable to employers, highlights the importance of resolving the workers' compensation proceeding first, where the employer believes the claim will be deemed compensable under the Act.

How does *Locasto* mesh with past decisions applying the exclusive remedy provisions?

While an employee is generally barred from receiving both workers' compensation benefits and civil damages, the Fourth District allowed a plaintiff's case to move forward even though she had accepted, albeit involuntarily, worker's compensation payments. In *Copass v. Illinois Power Co.*, 211 Ill. App. 3d 205 (4th Dist. 1991), held that simply accepting voluntary payments, without taking action before the Commission, did not amount to a clear assertion that the death was compensable under the Act. The *Copass* court also held that a plaintiff is required to allege defendants had a specific intent to injure.

While the Workers' Compensation Act provides exclusive remedies for claims against an employer for accidental injuries, conduct such as intentional infliction of emotional distress fall outside the Act. In *Poulos v. Village of Lindenhurst*, No. 00-C-5603, 2002 U.S. Dist. LEXIS 16596 (N.D. Ill. Aug. 30, 2002), the plaintiff sued her former employer for alleged violations of Title VII of the Civil Rights Act alleging a hostile work environment, sexual harassment, and intentional infliction of emotional distress. The plaintiff argued that her injuries were not accidental because she did not expect the defendants to inflict emotional distress. The court, noting that an accidental injury is unforeseen, held that her emotional distress claim could proceed.

In *Whitehead v. AM International, Inc.*, 860 F. Supp. 1280 (N.D. Ill. 1994), a federal court held the Act barred an employee's civil action for intentional infliction of emotional distress. There, plaintiff alleged that her employer discriminated against her on the basis of sex and race after she was fired for tardiness and insubordination. She claimed her supervisor singled her out from other employees, reprimanded her without justification, and denied her requests for benefits and vacation days. The court found the plaintiff's supervisor acted as an alter ego of the company because he had managerial authority over the plaintiff and discretionary power to grant her tuition reimbursement, vacation days, sick leave, and could discharge employees.

What do these decisions mean for private and governmental employers?

For now, you can rest assured the exclusive remedy provisions of the Act are being applied as they were intended – to prevent an employer from facing significant civil liability in addition to workers' compensation. It is important to remember, however, that an employee must *elect and actually receive* workers' compensation benefits. The mere filing of a workers' compensation claim by the employee does *not* prevent recovery in a civil suit if no benefits are awarded under the Act. Similarly, if an employee never files for workers' compensation benefits, the "possibility" that workers' compensation benefits might be available would not preclude civil damages.

Locosto raised some interesting claims handling strategy questions for employers who may be defending workers' compensation and civil liability claims arising from the same incident. Careful consideration should be made in the instance of a completely disputed workers' compensation claim with potential civil liability as to whether a claim should be accepted under workers' compensation. Can or should the employer pay the workers' compensation benefits on the theory that the recovery would then preclude a civil filing where damages could potentially be more? Or should the employer defend the disputed workers' compensation claim and be prepared to also defend the civil claim? What are the logistical difficulties presented when an employer chooses to defend both? Does the receipt of benefits through a settlement in an arguably non-compensable case under the Act still justify application of the exclusive remedy provisions? Would a defense argument that the employee *chose* to receive workers' compensation benefits through the settlement trump any argument that the exclusive remedy provisions do not apply for one of the four above-enumerated reasons?

Your Heyl Royster attorneys are available to assist private and governmental employers to navigate these and many more difficult questions and help you make the tough decisions employers often face when workers' compensation benefits are involved.