


Workers' Compensation Law in North Carolina

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What Talk About and Why?

- Limited Time (45 Mins) – What can I teach you that will help you in deciding WC cases?

- 1) Why Do We Have Workers' Comp in the First Place?
- 2) Workers Comp Law in a Nutshell
- 3) WC Procedural Overview





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Why Do We Have Workers' Comp in the First Place?



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Quick History Lesson

- “Those who cannot remember the past are condemned to repeat it.”—George Santayana, *The Life of Reason*, 1905.
- “If you don't know where you are going, you'll end up someplace else.” — Yogi Berra



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Prior System – Civil Court

- Time Period – Late 1800's to Early 1900's and before
- Had to sue employer directly for Injuries suffered at work
- Trial by Jury
- Theories:
 - Negligence of Employer
 - Intentional Tort by Employer

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Prior System Defenses – “The Three Horsemen of the Apocalypse”

- Contributory Negligence
- Assumption of the Risk
- Fellow Servant Rule




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Practical Results – Precompensation




- Most injured workers received no compensation at all
- Either destitute
- Or thrown on the charity of family, church or community
- Those who did win, usually won very little

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Impetus for Change?



- Progressive Enlightenment Regarding Worker Humanity
- Judicial Limitation of Common Law Defenses
- Legislative Changes
- Employees Started Winning
- “Mutual Intolerability”
 - Too many uncompensated injuries for employees
 - Too little predictability for employers

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“Mutual Concession”

- “Both [employer and employee] had suffered under the old system; the employers by heavy judgments, ... the workmen through the old defenses or exhaustion in wasteful litigation. **Both wanted peace.** The [employer], in exchange for limited liability, was willing to pay on some claims in the future, where in the past there had been no liability at all. The [employee] was willing not only to give up trial by jury, but to accept far less than he had often won in court; provided he was sure to get the small sum without having to fight for it.”

– Conrad v. Cook-Lewis, 198 N.C. 723 (1930).

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Philosophy Underlying WC

- “The ultimate social philosophy behind compensation liability is belief in the wisdom of providing, in the most efficient, most dignified, and most certain form, financial and medical benefits for the victims of work-connected injuries which an enlightened community would feel obligated to provide in any case in some less satisfactory form, and of allocating the burden of these payments to the most appropriate source of payment, the consumer of the product.”

– Arthur Larson, Workers’ Compensation Law: Cases Materials and Text, § 1.04[3] (3d Ed., 2000).

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Growth of Workers’ Compensation Acts

- US States Largely Adopted British Act of 1897
- Held Constitutional by US Supreme Court 1917 – NY Central Railroad v. White
- NC – Enacted 1929
- Last State – Miss. 1949



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Why Does This Matter?

Everything in Workers’ Comp is centered around meeting these two fundamental goals:

- 1) Deciding when the employer should pay for an injury; and
- 2) Striking a compromise between fairly compensating injured workers and not overburdening employers.


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NC Workers' Compensation in a Nutshell




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Types of Claims and Benefits



- Only Two Types of Claims:
 - 1) Accidents (90+ % of Claims)
 - 2) Occupational Diseases
- Only Two Types of Benefits:
 - 1) Medical Treatment
 - 2) Disability / Wage Loss

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Accident Claims

- N.C.G.S. § 97-2(6)
- To be a compensable accident, must have:
 - An injury;
 - By accident;
 - Arising out of; and
 - In the course of the employment




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“Injury by Accident” Non-Back Injury Claims



- Something unusual or unexpected must happen other than the injury
- Slip, twist, trip, fall, unusual exertion...
- “If you’re doing your normal work in the normal way, and you injure any part of your body other than your back (or hernia), it is not a compensable WC claim in NC”


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Back Injury Claims “Specific Traumatic Incident”

- Back claims are different - STI
- Can be compensable even though doing normal work
 - Doesn’t really have to be very “S. T. or I.”
- Focus is on identifying a cognizable time in the employment when the injury occurred




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“Arising Out Of” the Employment



- Injury must have a causal connection with the work being performed
- “Increased Risk” Test
 - Does the work put the employee at an increased risk for being injured in this way as compared to members of the public generally?

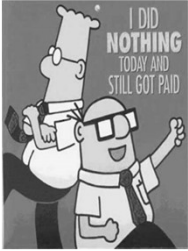
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“In the Course of” the Employment

- Injury must be within the time, place, and circumstances of the employment
 - Was the employee “about the business” of the employer at the time of the injury?
- Benefit to the employer is primary focus




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Occupational Diseases

- N.C.G.S. § 97-53
- Listed Diseases
- 97-53(13) “Catch-All”
 - Work was a significant causal factor in the development of the disease
 - Work placed the employee at an increased risk for developing the disease as compared to members of the public not so employed




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Medical Causation



- All conditions causally related to the initial accident are compensable
- “Thin-Skull Rule” – Take the employee as you find them
- If the accident aggravates, accelerates or exacerbates a pre-existing condition, the employer is liable for the full extent of injury


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Benefits

- Only two types of benefits
 - Medical
 - Disability / Wage Loss
- No pain and suffering
- No punitive damages
- Employee is prohibited from suing the employer in civil court






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Disability Benefits

- Total Disability (G.S. 97-29)
 - 2/3 of AWW for up to 500 weeks*
- Partial Disability (G.S. 97-30)
 - 2/3 of the difference between pre-injury and post-injury AWW for up to 500 weeks
- Permanent Partial Impairment (G.S. 97-31)
 - 2/3 of wage loss until MMI, then payment for PPI rating under G.S. 97-31






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Termination of Benefits

- Return to work
 - Stop benefits, file Form 28 or 28T
- Release to return to work with no restrictions
 - Form 24 Required
- Unjustified refusal of suitable employment
 - Form 24 Required






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Affirmative Defenses



- N.C.G.S. § 97-12 and -12.1
- Total Defenses
 - Intoxication
 - Willful Intent to Injure Oneself or Another
 - Willful Misrepresentation at Hiring
- Reduction or Augmentation of Benefits (10%)
 - Failure to use safety device





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Workers' Compensation Procedure







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Claims Process

- Claim Filed (Two Year SOL)
- Employer/Carrier Accepts or Denies
- If Denied – Plaintiff files Hearing Request
- Mediation Mandatory in NC
- If No Settlement – DC Hearing
 - Process
- Appeals to FC and COA





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Administrative Procedure



- Industrial Commission
 - Administers the WC Act
 - Hears and Decides All Claims
- Claims heard by an ALJ
 - Deputy Commissioner
- Appeal to Full Commission
 - De Novo Review
- Appeal to COA
 - Errors of Law Only

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QUESTIONS

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Parting Thought

“Friends come and go, but enemies accumulate.”

-George W. Ballance, Jr. (my Dad)



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Contact Information



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