



A SELECTED READING

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Municipalities and Workers Compensation Law

Alabama statutes on workers' compensation are codified in Chapter 5 of Title 25, Code of Alabama 1975. Workers' compensation laws replaced employee/employer adversary court proceedings under common law. Simply stated, workers' compensation is a system under which an employee who has become diseased, injured, or killed by an accident arising out of and in the course of employment is entitled to medical treatment and monetary compensation as a matter of right and without regard to fault.

Under workers' compensation, an employer forfeits the right to common law defenses and automatically assumes, as an inherent cost of doing business, the financial liability for an employee's injuries or death with limited exceptions. The employee, in turn, forfeits the right to sue and recover any amount greater than is stipulated by the law, thereby providing the exclusive remedy for bodily injuries or death that occur within the line and scope of employment. Properly implemented, workers' compensation should establish an equitable balance – the worker receives timely compensation for injuries, while the employer is protected by limitations on the claims amount for which it is liable.

A secondary benefit of the system is the promotion of occupational safety through economic incentives for employers. If the incidence of work-related injuries is low, the improvement is reflected in the reduction of workers' compensation insurance costs. Thus, efforts by the employer to create a safer work environment can reduce the total cost of doing business.

Co-Employee Provisions

Sections 25-5-1(4), 25-5-11, 25-5-51 and 25-5-53, Code of Alabama 1975, restrict the right to bring co-employee lawsuits to cases involving willful conduct which results in, or proximately causes, an injury or death. "Willful conduct" is defined in Section 25-5-11, Code of Alabama 1975, to include:

- A purpose or intent or design to injure another;
- The willful and intentional removal from a machine of a safety guard or safety device provided by the manufacturer of the machine with knowledge that injury or death would likely or probably result from such removal if the removal did, in fact, increase the danger in the use of the machine and was not done for the purpose of repair of the machine or was not part of an improvement or modification of the machine which rendered the safety device unnecessary or ineffective;
- The intoxication of another employee of the employer if the conduct of that employee has wrongfully and proximately caused injury or death to the plaintiff or the plaintiff's decedent, but no employee shall be guilty of willful conduct on account of the intoxication of another employee or other person; or
- Willful and intentional violation of a specific safety rule of the employer after written notice of the violating employee by another employee who, within six months after the date of receipt of the written notice, suffers injury resulting in death or permanent total disability as a proximate result of the willful and intentional violation. The written notice to the violating employee shall state with specificity all of the following:
 - a. the identity of the violating employee;
 - b. the specific written safety rule being violated and the manner of the violation;
 - c. that the violating employee has repeatedly and continually violated the specific written safety rule referred to in section (b) above with specific reference to previous times, dates and circumstances;
 - d. that the violation places the notifying employee at risk of greater injury or death.

A notice that does not contain all of these elements shall not be valid notice for purposes of the law.

An employee shall not be liable for his or her willful conduct if the injured employee personally violated a safety rule or otherwise contributed to his or her own injury. No employee shall be held liable under this section of the law for the violation

of any safety rule by any other employee or for failing to prevent any violation by any other employee.

An employee's acceptance of workers' compensation benefits triggered immunity provisions for an action against a co-employee, noting specifically that immunity is extended to co-employees who are entitled to receive workers' compensation benefits unless the injured employee can prove that the injury was caused by willful conduct on the part of the co-employee. *Brunson v. Lucas*, 5 So.3d 1274 (Ala.Civ.App.2008).

Who is Covered by the Law?

All cities of 2,000 or more in population and all incorporated municipal boards, regardless of the population of the municipality, are covered by the workers' compensation law and coverage is compulsory.

Coverage Exclusions

Following are exclusion to coverage under workers' compensation law:

- Municipalities and related agencies with populations of 250,000 or more;
- Any employer who regularly employs less than five employees in any one business; and,
- Persons whose employment at the time of injury is casual and not in the usual course of the trade, business, profession or occupation of the employer.
- Municipalities having a population of less than 2000 according to the most recent federal decennial census and employers employing less than 5 employees may voluntarily elect to be covered under the Alabama Workers' Compensation Act through following a process proscribed by law. Larger municipalities and related agencies with populations of 250,000 or more do not have this option.

Benefit Exclusions/Defenses

Where an injury or death was caused by the willful misconduct of the employee or the employee's intention to bring about the injury or death of himself or another, by an accident due to the injured employee being intoxicated from the use of alcohol or impaired by the use of illegal drugs, or by the employee's willful failure or willful refusal to wear safety appliances provided by the employer or due to the willful refusal or willful neglect of the employee or the willful violation of the law by the employee or his or her willful breach of a reasonable rule or regulation of the employer of which rule or regulation the employee has knowledge an employee is precluded from receiving compensation benefits under the workers' compensation laws. Under most conditions medical benefits would be payable.

Benefits Payable

Alabama law provides for the payment of:

- All hospital, medical and surgical expenses of the injured employee. If vocational or physical rehabilitation is required, the law requires the employer to pay the costs of such rehabilitation.
- If the employee is disabled, either temporarily or permanently, totally or partially, the law requires the employer to make weekly compensation payments to the injured employee.
- In cases where the employee dies as a result of an on-the-job injury, his or her dependents or estate are entitled to receive death benefits and burial expenses in such amounts as provided by the law.

Responsibilities of Employers Covered by the Law

An employer subject to the provisions of the law – either by law or by election – has several alternative methods of covering the risks. The employer can:

- Insure the risk with a workers' compensation insurance carrier authorized to do business in the State of Alabama;
- Become a self-insurer and pay all workers' compensation claims when they occur;
- Purchase an excess and aggregate policy to cover all claims above a certain monetary amount and self-insure all claims or a portion of claims below that amount; or
- Join with other employers in a plan of pooled coverage.

If an employer elects to insure the risk with a private insurance company, premiums are based on the payroll of the employer. The idea is that if one business has a \$500,000 payroll and another has a \$50,000 payroll, then the former is 10 times as big and is likely to have 10 times as many accidents. A rate per \$100 of payroll is used. The rate varies according to

the risk of the job involved. Occupations with a bad history of accidents will have a higher assigned risk, creating a higher premium per \$100 of payroll for that employee. For example, in one state the rate for office workers is 16 cents per \$100 of payroll. For stunt fliers and parachute jumpers the rate is \$17 per \$100 of payroll. All rates and classifications are strictly controlled by state law. Most insurance carriers use the rate classifications furnished by a rating bureau.

Section 25-5-8, Code of Alabama 1975, requires all employers who elect not to cover their risks by insurance to furnish satisfactory proof to the director of the Department of Labor of their financial ability to pay directly such compensation in the amount and manner and when due as required by law. If the director is satisfied, he or she shall authorize the employer to operate as a self-insurer. This privilege can be revoked by the director whenever the employer fails to meet the obligations under the law. In November 1976, the Municipal Workers Compensation Fund (MWCF) was formed as a separate corporation to give Alabama municipalities and their incorporated boards the opportunity to pool their workers' compensation obligations at a savings. This program is available to all member municipalities and boards regardless of population. For more information please contact MWCF at (334)262-2566.

Procedures Following an Injury

Section 25-5-78, Code of Alabama 1975, requires every injured employee to give or cause to be given, to the employer written notice of the accident within five days after the occurrence. If an injured employee, or his or her personal representative in case the injury caused the death of the employee, fails to give such notice to the employer, the worker shall not be entitled to physician or medical fees or to any compensation due under the Act, unless it can be shown that the person required to give notice was prevented from doing so by reason of physical or mental incapacity, other than minority or by fraud, deceit or equally good reasons. However, no compensation shall be payable unless written notice is given within 90 days after the occurrence of the accident or within 90 days after death in cases where death occurs. While statutory language requires written notice, case law has modified this to some degree. Notice of an injury, whether written or verbal, will suffice for meeting the notice obligations.

Upon receiving notice of the injury, the employer should immediately notify their workers' compensation provider regarding the injury. If the employer is self-insured, the Department of Labor should be immediately notified of the injury using forms approved by the Department. As the claim is administered, several other reports are required to be filed with the Department of Labor. These reports should be filed by the employer's insurance carrier. However, if the employer is self-insured, the employer must file these reports.

Section 25-5-4, Code of Alabama 1975, requires all employers to keep records of all injuries – fatal or otherwise – received by his or her employees in the course of their employment, for which compensation is claimed or paid.

Safety Committees

Section 25-5-15, Code of Alabama 1975, states that upon the written request of any employee, each employer subject to the law shall appoint a safety committee. The safety committee shall consist of not less than three committee members, one of whom must be a non-supervisory employee. The safety committee shall advise the employer regarding safety in the workplace, including suggestions from employees regarding safety conditions in the workplace. Any employee shall have the right to notify the committee of an unsafe condition in the workplace. The safety committee shall develop procedures by which an employee may give such notification. The provisions of the law relating to safety committees shall not apply to any employer who now or in the future has an established safety committee pursuant to contract or agreement with its employees or their representative.

Retaliatory Actions Against Employees

Section 25-5-11.1, Code of Alabama 1975, states that no employee shall be terminated by an employer solely because the employee has instituted or maintained any action against the employer to recover workers compensation benefits as provided by the law. No employee shall be terminated by an employer solely because the employee filed a written notice of a safety rule as provided by law. Any such actions are not protected by the exclusivity provisions of the workers' compensation laws.

Responsibilities of Employers Not Covered by the Law

A municipality with less than 2,000 inhabitants which elects not to cover its employees with workers' compensation is subject to common law remedies. Under common law, the employer owes certain legal duties of protection to employees:

- To provide and maintain a reasonably safe place to work, as well as safe appliances, tools and equipment;
- To provide a sufficient number of suitable and competent fellow employees to permit safe performance of work; and

- To establish and enforce proper safety.

If a municipality refuses to pay an injured employee's claim for damages resulting from job injuries, the only recourse for the employee is to sue the employer for damages in court. In suing, the employee has the burden of proving that the employer's negligence caused the injury. In defense, the employer could invoke one or more of three common law defenses:

1. **Contributory Negligence:** That the accident was the result of contributory negligence on the part of the employee – that is, the employee was either partially or wholly responsible for the accident;
2. **Fellow Servant Doctrine:** That the accident resulted from negligence on the part of the employee's co-workers; or
3. **Assumption of the Risk:** That the accident resulted from an understood risk of the job, and the employee knew of the hazard when employment was accepted.

If a judge or jury hearing the case agrees that the employee's injury or death occurred under one of these three conditions, the employer could be held free from any obligation to compensate the worker for the injury and the worker would receive nothing.

Municipalities in Alabama without workers' compensation coverage must also provide their employees with a safe workplace. Although Alabama municipalities are not subject to OSHA regulations, Section 25-6-1, Code of Alabama 1975, makes employers liable to employees who are injured in the workplace if:

1. the injury was due to a defect in equipment, etc., used in the workplace;
2. the injury was caused by the negligence of a supervisor appointed by the employer;
3. the injury was caused by the negligence of another employee acting pursuant to orders or directions of the employer; or
4. the injury was caused by the negligence of another employee or other person acting in obedience to instructions given to someone who has been delegated that authority by the employer.

An exception states that employers are not liable for conditions known to the employee that are not communicated to the employer. This law is generally superseded by the worker's compensation laws, except in cases where an exception is created in the workers' compensation laws. *C.F. Halstead Contractor v. Lowery*, 51 Ala. App. 86, 282 So.2d 909 (Ala. App. 1973). Thus, municipalities with workers' compensation coverage are, generally, not subject to this statute.

Additional Information

More information can be obtained from League headquarters; from Millennium Risk Managers, P.O. Box 43769, Birmingham, Alabama 35243; or from the Workers Compensation Division, Department of Labor, State Government Office, 649 Monroe St., AL 36131.

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