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Practice in focus

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# Workers' Compensation

## The Rights of the Injured Employee and the Employer

By Thomas F. Dorn, Jr.

Employees who are injured on the job have the right to file a claim in New Jersey Workers' Compensation court. The workers' compensation attorneys at our firm represent injured workers in the claims process and assist them in obtaining an award for their injuries. There is no consultation fee or hourly fee in workers' compensation cases. By law, a workers' compensation attorney receives 20% of an award when the case is settled.

Every employer in New Jersey is required to maintain workers' compensation insurance for their employees. If an accident occurs on the job, the employer must notify

their workers' compensation insurance company to file a claim. The insurance company then notifies in writing the Division of Workers' Compensation in Trenton of the accident.

The workers' compensation insurance company—not the employer—is responsible for the following benefits that the injured employee receives: (a) medical treatment, (b) payment of temporary disability and (c) payment of a permanent disability award. Because the workers' compensation insurance company pays and chooses the treating medical



providers, the employee cannot choose their own doctor and cannot use their own private health insurance. On occasion, the insurance company will refuse to provide medical treatment and our workers' compensation attorneys have to file papers in court to obtain the necessary treatment.

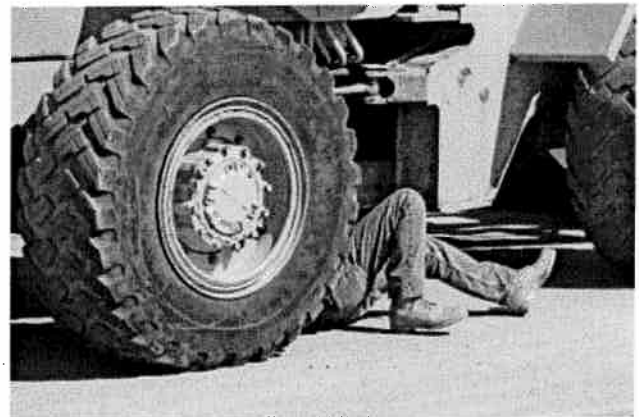
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## When is an Accident Work Related?

By Thomas F. Dorn, Jr.

Generally, as an employee, if you have reached your place of employment, and you have begun to work and then you get hurt, the injury is compensable. This means that the injury is covered by workers' compensation insurance. However, there are occasions when there is a dispute about whether an accident is compensable.

The definition of when an injury is compensable is governed by the so-called "Premises Rule" that states: "Employment shall be deemed to commence when an employee arrives at the employer's place of



employment to report for work and shall terminate when the employee leaves the employer's place of employment, excluding areas not under the control of the employer." The workers' compensation

attorneys at our firm have handled many cases in which the insurance company has denied that an injury was compensable. A case was denied in which an employee was injured on

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## Rights of Employee and Employer...

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If the injured employee is unable to work for at least seven days, the insurance company will pay the employee temporary disability benefits in the amount of 70% of the employee's gross weekly salary until the employee returns to work.

To obtain a permanency award, our attorneys file a formal claim petition in workers' compensation court. The claim petition is filed in the county where the injured employee lives. For employees who live in Morris, Sussex or northern Warren County, the court is located in Mount Arlington.

Ultimately, the workers' compensation judge assigned to the case determines what amount of money the injured employee receives in a permanency award after considering medical

evidence presented by our attorneys and the insurance company attorneys. In most cases, after an employee receives an award, the case can be reopened up until two years after receiving payment of the award.

In addition to the above basic overview, there are other important aspects of a workers' compensation case. First, it does not matter if the employee was at fault in the accident.

Second, under New Jersey Statute 34:15-39.1, an employer cannot fire or discriminate against an injured worker for getting hurt or for filing a claim in workers' compensation court.

Third, workers' compensation court also has jurisdiction over occupational exposure cases. For example, some employees develop injuries over a period of time as opposed to a specific

accident date. We have handled numerous occupational cases for employees who develop injuries to body parts as a result of years of typing, heavy lifting, bending or kneeling.



Last, pain and suffering damages are not allowed in workers' compensation awards. Because no jury system exists in compensation cases, the award is made by the judge and is based upon a chart which establishes percentages of disability for the body part that was injured.

## When an Accident is Work Related...

(from page 1)

the way into work in the lobby of a multi-tenant building. Cases in which employees who were on a cigarette break or coffee/soda break were also denied. Our attorneys have successfully argued that New Jersey courts interpret the Premises Rule to include common areas

of a building such as lobbies. Because common areas are important to employers and are used by them, they are part of the employer's premises. Also, under the "Personal Comfort Doctrine," employees are allowed to take breaks, and any injury occurring during the break is compensable. However, if the employee is injured while on a personal errand, such as going shopping

or going to the post office, the injury is not compensable.

If you have been injured and you have a question about whether your injury is work-related, a Workers' Compensation attorney at our firm will meet with you and advise you at no charge. Please call the office to set up an appointment.

## Workers' Comp Lawyers: who we are and what we do....

The attorneys in our firm will help you file a Workers' Compensation claim:

- ✓ When you suffer a serious injury on the job that may prevent you from returning to work.
- ✓ When your employer and the insurance carrier have denied your claim for workers' compensation benefits.
- ✓ When injured, if you are having trouble with the insurance company and you are not receiving the benefits to which you are entitled.

### Andrew S. Berns



Andrew Berns is a partner in the firm and Chair of the firm's Commercial Litigation practice and the Personal Injury and Worker's Compensation Department.



### Christopher L. Musmanno

Christopher Musmanno has developed a strong track record in representing clients as plaintiffs and defendants in Products Liability, Workers' Compensation, Medical Malpractice, Employment Discrimination and Insurance Fraud cases.



### Thomas F. Dorn, Jr.

Thomas Dorn handles personal injury and workers' compensation matters for the firm. He is certified by the N.J. Supreme Court as a Civil Trial Attorney and as a Workers' Compensation Attorney.

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