

Injuries & Illnesses
OSHA Recordable vs Worker's Comp

1. Kevin and another college kid worked every summer at a small veneering company that has 9 regular full-time employees. While on lunch break, Kevin microwaved a greasy hot dog and it blew up, severely burning him and another guy.

- Recordable on OSHA Log? Yes No

No for Kevin, preparing food for personal consumption, yes for other kid, he wasn't the one preparing the food.

- Compensable under WC? Yes No

If the injury occurred on the employer's premises, it is covered:

"Generally, an employee who is injured at work while attending to personal needs, such as smoking, eating, getting refreshments or going to the lavatory, is paid worker's compensation.

An employee injured on the employer's premises during the lunch hour... is covered." *Wisconsin Worker's Compensation Guide*

2. In the month of February, a 30-year veteran truck driver, Jungle Joe, noticed numbness and tingling in his hands that was relieved when he stopped to rest and stretch a bit. By June, it had gotten worse. He saw a Dr. who said his symptoms were consistent with a WRMSD from hand vibration related to the steering wheel. His thyroid test came back normal, and an EMG confirmed bilateral carpal tunnel syndrome. Surgery was scheduled in July. The boss said the real cause was Joe's Harley which he rode every day in warm weather. Joe said he'd been riding motorcycles all his life and never had any problems before.

- Recordable on OSHA Log? Yes No

Per the test done by the doctor, the boss' opinion doesn't matter.

- Compensable under WC? Yes No

The determination of whether or not a condition is related to employment is based on medical support. If the doctor opines that it is work-related it should be covered absent a medical opinion to the contrary. Once Joe misses time from work to see the doctor or by authorization from the doctor, an injury date is established.

3. Dr. Bill, dentist-owner of the clinic, asked his receptionist, Cheryl, to pick up flowers for his wife's birthday. Cheryl was injured in a car accident on her way back to the office from the florist shop.

- Recordable on OSHA Log? Yes No

Cheryl was engaged in work activities in the interest of the employer.

- Compensable under WC? Yes No

An injury occurring away from the company premises, but while the employee is still performing service for the employer and under the employer's direction and control, is compensable. *Wisconsin Worker's Compensation Guide*

If a person in authority over the employee asks the employee to perform a service for the personal benefit of the employer... and the employee is injured... the injury grew out of & was incidental to employment.

4. Jim and John are always goofing around at the engineering firm. Late yesterday, Jim shot a rubber band and accidentally hit John's eye. John went to a walk-in clinic and was diagnosed with a subconjunctival hemorrhage, no foreign body, and was sent home with an eye patch for the day. He does not need to follow-up with a doctor unless the eye gets worse instead of better.

- Recordable on OSHA Log? Yes No

1st aid treatment only.

- Compensable under WC? Yes No If John did not instigate or participate in the horseplay

The circumstances surrounding horseplay or fighting determines if an injured worker should be compensated. If the injured employee started the horseplay or was the aggressor in the fight, it is unlikely that the employee will be paid compensation. On the other hand, if an employee is injured as the result of horseplay started by others, or was attacked without provocation, he or she may be awarded compensation. *Wisconsin Worker's Compensation Guide*

In this incident, John has not lost any compensable time off of work as the date of injury is never covered. Subsequent to the date of injury, the first 3 days of lost time are not paid unless the employee is disabled more than 7 calendar days. However, the medical expenses are payable. (Not reportable to WC unless compensable lost time or PPD).

5. Phoebe, a gas station manager, was on break. Angry about their recent divorce, her husband stormed into the break room and shot her dead. The cashier heard a

ruckus and went to see what was going on. The husband killed the cashier too, robbed the till and fled.

- Recordable on OSHA Log? Yes No

For both Phoebe and the cashier

- Compensable under WC? Yes No

102.03 Conditions of liability.

(1) Liability under this chapter shall exist against an employer only where the following conditions concur:

(a) Where the employee sustains an injury.

(b) Where, at the time of the injury, both the employer and employee are subject to the provisions of this chapter.

(c)

1. Where, at the time of the injury, the employee is performing service growing out of and incidental to his or her employment.

The claim for death benefits relating to Phoebe's death would not be compensable as her death did not arise out of employment, but arose from a personal relationship outside of the employment & the conditions of her employment did not contribute. However her coworker's death would be compensable as her death arose out of the conditions of her employment.

6. Gary, a 48 year old spray painter, was a heavy smoker, 55 lbs. Overweight, and lived on greasy fast food. For the past 10 years he voluntarily wore a negative pressure, cartridge type respirator at work without a problem. Yesterday he suffered a heart attack and died 55 minutes later at the hospital. His employer does not have a written respiratory protection program because it has an OSHA-compliant, well-vented spray paint booth. Gary used his own respirator from home, but was not medically cleared for respirator use.

- Recordable on OSHA Log? Yes No

Depends on autopsy report, if died from heart attack because of clogged arteries, etc, no.....if died because of the respirator, yes.

- Compensable under WC? Yes No

Heart attacks are generally not covered unless there is evidence of extraordinary stress and/or exertion. There is no indication that the heart attack arose out of employment.

7. Jerry, a shy factory worker, had a pre-existing history of paranoid schizophrenia. Because he kept to himself, co-workers joked about him. The "nut-case" jokes caused Jerry to become agitated, and eventually were so unbearable that he could not perform his job. He left work and was admitted by his psychiatrist to a hospital

for three weeks until he was stabilized on numerous medications. Despite treatment, he is incapable of returning to work and is seeking compensation for permanent total disability.

- Recordable on OSHA Log? Yes No

If the doctor states the harassment was the cause of the disability.

- Compensable under WC? Yes No

An individual may recover for nontraumatic mental injuries sustained on the job. The test for determining compensability for such injuries is much greater than that of a traumatic injury. The Supreme Court has held the following:

...that mental injury nontraumatically caused must have resulted from a situation of greater dimensions than the day-to-day emotional strain and tension which all employees must experience. Only if the 'fortuitous event unexpected and unforeseen' can be said to be so out of the ordinary from the countless emotional strains and differences that employees encounter daily without serious mental injury will liability under ch. 102, Stats., be found.

8. Pete was standing at a grinder when he fell and hurt his arm. He told the ER Dr. he felt dizzy, tripped on a cord, then hit his arm on the bench on his way down. His upper arm was broken. Because of cardiac symptoms, he was also diagnosed with a heart attack and underwent angioplasty. Because his arm only needed a sling, the orthopedic Dr. said he could perform restricted duty on week after the accident; but his cardiologist said he needed a four-week cardiac rehab program before he could tolerate light physical activity. Five weeks after injury, he was back to work on light duty and within another week the sling was off and he was able to perform his usual duties.

- Recordable on OSHA Log? Yes No

Put on restricted duty.

- Compensable under WC? Yes No

The heart attack and the related treatment & lost time is not compensable. However the injury to his arm would be as there is a positional risk factor.

In order for an injury to be compensable, positional risk doctrine requires that conditions of employment create a "zone of special danger" out of which injury arose, and injury in such zone can arise out of employment even though accident which caused injury was not "caused by employment."

9. Smurf sustained a fairly deep laceration on the backs of 2 fingers while cutting sheet metal. The nurse stanchd the bleeding and assessed his range of motion. Satisfied that he had not nicked any tendons, she applied butterfly bandages and finger guards; then sent him away with dressings and instructions. She followed up with him the next few days. He healed well.

- Recordable on OSHA Log? Yes No

1st aid treatment.

- Compensable under WC? Yes No

Although there may not be any lost time, reasonable medical expenses should be paid.

10. Mindy's knee buckled in the hallway. Although she fell, she did not slip or trip on anything. She cut her knee and hit her head. The ER Dr. said she did not have a concussion, and gave her knee first aid (applied steri-strips, no stitches) and an icepack for her headache, then sent her home for the rest of the day.

- Recordable on OSHA Log? Yes No

1st aid treatment.

- Compensable under WC? Yes No

There is no presumption that an unexplained fall occurring in the course of employment "arises out of employment" as used in s. 102.03(1)(e). Injury appears to be idiopathic in nature with no positional risk factor.

Mindy called the ER Dr. from home because of her headache. The Dr. recommended taking over-the-counter Advil at prescription strength.

- Recordable on OSHA Log? Yes No

Prescription strength Advil.

- Compensable under WC? Yes No

11. Twenty months ago, Abby had right carpal tunnel release surgery, healed well without permanent restrictions; case closed. The job required pounding with a rubber mallet 8 hours a day. She saw the company nurse 11 months ago, complaining of a sore right wrist. As a stopgap measure, the nurse gave her an immobilizing wrist splint and recommended job rotation to HR and the plant supervisor. Union jobs have varying pay scales and can't be rotated. Fortunately, a shipping department job opened up that was the same pay, so Abby was

permanently transferred to prevent a recurrence of full-blown carpal tunnel syndrome. Her symptoms seemed to improve.

- Recordable on OSHA Log? Yes No

Because of the immobilizing wrist splint and the transfer to another job.

- Compensable under WC? Yes No

Reasonable medical expenses & lost time are compensable. The date of injury would be the first time off of work as a result of the disability, either to see the doctor or medically authorized off. Claimant initially lost time 20 months ago. The subsequent change in jobs did not result in any wage loss.

Two months later Abby got pregnant and started retaining fluid. During her ninth month, the Dr. took her off work due to severe right wrist pain and told her to continue wearing the splint. Six weeks after the baby was born, she returned to work with no restrictions and without pain.

- Recordable on OSHA Log? Yes No

Pregnancy can cause carpal tunnel and she had no problems after the birth.

- Compensable under WC? Yes No

The CTS had resolved after switching jobs. After becoming pregnant, Abby suffered severe wrist pain. If the doctor indicates that the subsequent pregnancy caused an increase in symptoms, it would not be compensable.

12. A construction company has three sites: site "A" employs 2 workers, site "B" employs 2 workers, and site "C" employs 5 workers including Hank, a 48 year old carpenter. Hank has a history of chronic low back pain from degenerative disk disease, but no documented disability. On Thursday he went to his doctor for increased low back pain after lifting a 25 lb. box off the ground. The company is closed on Saturdays and Sundays, so his Dr.'s slip said to take off work through the weekend and return on Monday without restrictions.

- Recordable on OSHA Log? Yes No

Only 9 employees total.

- Compensable under WC? Yes No

Assuming he had a pre-existing condition, if the work aggravated it beyond normal progression, it would be compensable. Although reasonable medical expenses are covered, Hank lost no time beyond the 3- day waiting period (s. 102.43). Therefore,

he would not be paid TTD. (Not reportable to WC unless additional lost time or PPD).

13. Jack works for a large Detroit manufacturer that sent him to a three-day conference sponsored by its sister company across the border in Toronto, Canada. A vendor invited Jack to its reception at the conference center where he had a little too many complimentary drinks. At 5:30 p.m., he got into a car accident on the way back to his hotel. His lip needed 28 stitches. His blood alcohol was 0.1 (legally intoxication is 0.08).

- Recordable on OSHA Log? Yes No

The injury happened in another Country.

- Compensable under WC? Yes No

S. 102.03(1)(f) Every employee whose employment requires the employee to travel shall be deemed to be performing service growing out of and incidental to the employee's employment at all times while on a trip except when engaged in a deviation...

Under s. 102.58, intoxication does not defeat a worker's compensation claim, but only decreases the benefits. (This does not apply to medical expenses).

As there was no lost time, the injury is not reportable to WC. However reasonable medical expenses would be covered.

14. Before punching in one morning, Bubba tripped on a stone in the gravel parking lot while walking and lighting his cigarette. He broke off his two front teeth and needed root canals and crowns, although they were in bad shape before (his other nickname was "Green-teeth").

- Recordable on OSHA Log? Yes No

Because it happened in the parking lot and was not a motor vehicle accident.

- Compensable under WC? Yes No

Assuming this was the employer's designated parking lot, the injury and related treatment would be covered.

15. Marvin hurt his rotator cuff at work and his Dr. said he could not lift more than 25 lbs. above shoulder height until he was re-checked in 3 weeks. Two and a half weeks after the injury he told his supervisor to shove it because he got a better job. He didn't bother going back to see his doctor, but a month later he had worse shoulder pain from stacking 35 lb. Boxes onto a pallet, the top row was above shoulder height. His Dr. wrote the same restriction for the new employer.

- Recordable on OSHA Log? Yes No

This was a new incident and was put on restrictions from the doctor.

- Compensable under WC? Yes No

The injury would be compensable, however if the disability is aggravated, caused or continued by an unreasonable refusal or neglect to submit to or follow any competent and reasonable treatment, the worker's disability during this period may be barred under s. 102.42(6).

16. Gwen walked out to her car in the parking lot and began to drive away. She stopped the car in the lot to retrieve her purse from the trunk. She slipped backward on the ice and knocked herself out. The ER Dr. examined her, said she was fine and released her without treatment.

- Recordable on OSHA Log? Yes No

She was unconscious and she was not in her car at the time of the incident.

- Compensable under WC? Yes No

As long as EE was still in the company owned parking lot at the time the injury occurred, the injury should be covered. However, it is not reportable to WC as there is no compensable lost time. The carrier may argue that the employee was deviating from her employment.

17. Pal is an avid bowler and right hand dominated. He saw his Dr. for right wrist pain that he attributed to his repetitive job of inserting 4 lb. Products into plastic bags at a rate of 15 per minute for three months. Dr.'s restriction said no forceful grasping or wrist rotation for a week until the next appointment. His employer said not to come in because there was nothing for him to do. He bowled last night, scored low, and couldn't finish the third game.

- Recordable on OSHA Log? Yes No

Because the doctor put him on restrictions.

- Compensable under WC? Yes No

EE's injury is compensable. As his employer had no light duty work available, TTD benefits are payable during his disability.

A week later, at Pal's recheck appointment, the Dr. ordered physical therapy three times per week and renewed the same hand restrictions. The WC insurer convinced

the employer to bring Pal back for temporary transitional duty sorting buckets of screws for reuse. Pal refused because it was incredibly boring and paid \$2 per hours less.

- Recordable on OSHA Log? Yes No

Because of the physical therapy and continued restrictions, would not record again, already on from previous, just continue counting the days.

- Compensable under WC? Yes No

Pal should be paid temporary partial disability benefits based on a comparison of his wage at the time of injury to the amount he could have earned had he accepted the light duty work offer.

18. Fritz hurt his arm at work. His Dr. said he could work with the other hand for a week. Fritz could perform his usual job with his other arm, although it would be slower and less productive. The manager agreed to let Fritz try. Fritz told his manager he didn't want to submit a WC claim and lose his 10-year safety award (a leather Packer jacket), and besides, his health insurance deductible was already met for the year.

- Recordable on OSHA Log? Yes No

No change of job and he could perform his routine work functions one handed.

- Compensable under WC? Yes No

Per s. 102.16(5) no agreement by an employee to waive the right to compensation is valid.

19. On Friday, Maggie got a chemical splash in her eye while scrubbing rusty metal with naval jelly. She flushed it for 15 minutes but didn't report it; she was afraid of getting into trouble for not wearing safety glasses. She cleaned her dusty attic that weekend and by Monday her eye was badly infected. She was off work for a month and lost partial sight in the eye. Initially the ER Dr. said attic dust had infected her sore eye, but the ophthalmologist said later that if she had immediately come in and had the rusty debris flushed out, her eye wouldn't have become infected.

- Recordable on OSHA Log? Yes No

Significant condition.

- Compensable under WC? Yes No

The fact that the injured EE may not have exercised good judgment in seeking treatment, does not negate the fact that it is a work-related injury.

20. One Thursday, a driver forgot to chock the truck wheels and the portable dock board was not properly secured. Elmer broke five ribs when his forklift fell off the loading dock. He was hospitalized for 2 days, then sent home for 9 more days. Elmer's co-workers reported he smelled a little like alcohol that day. The accident happened just before deer season when the plant shuts down for the week, so Elmer returned on Monday when the plant re-opened.

- Recordable on OSHA Log? Yes No

Because of the fx ribs, hospitalization and off work for 9 more days, alcohol doesn't count as far as recordability goes.

- Compensable under WC? Yes No

Reasonable & necessary medical expenses are payable. However, per s. 102.43(8), if the plant shutdown was in accordance with a collective bargaining agreement, and Elmer was earning full salary at the time of the shutdown, he would not be eligible for temporary disability benefits during the shutdown. If the injury was caused by intoxication, the carrier could claim a 15% reduction in benefits due to a safety violation.

21. Niles, VP of R&D, hated the 95-minute daily commute to the office and was allowed to work out of his home two days per week. He was upstairs refilling his latte when his business phone rang downstairs. In his hurry to pick up the call, he tripped down the stairs and fractured his ankle. The call was from the CEO to confirm their golf game on Sunday.

- Recordable on OSHA Log? Yes No

Running down the steps does not directly relate to his performance of work.

- Compensable under WC? Yes No

EE was taking a break to attend to personal needs.

22. Herb worked in glass manufacturing all his life. Three years ago, at age 49, Herb went to the Dr. for frequent coughing, wheezing and upper respiratory infections and was diagnosed with occupational silicosis. Since then, he seemed to have good weeks and bad weeks. Yesterday his doctor evaluated him again for a bad chest infection, and ordered numerous tests. Antibiotics, steroids, and inhaler were prescribed; the doctor said he could no longer tolerate wearing a respirator on the job.

- Recordable on OSHA Log? Yes No

Significant condition, occupational silicosis (should have been recorded 3 years ago when diagnosed)

- Compensable under WC? Yes No

Disability caused by an occupational disease is covered.

23. Becky had her annual Pap smear and mentioned her knee was clicking. The Dr. assessed her activities and believed the pain was from frequent squatting, twisting and climbing on the job; her cartilage could be a little frayed. He prescribed a three-week course of anti-inflammatory medication and gave her a neoprene knee support to wear at work, which helped a lot. She doesn't need a re-check appointment at this time.

- Recordable on OSHA Log? Yes No

Anti-inflammatory medication.

- Compensable under WC? Yes No

Compensable, but not reportable to WC unless more than 3-days lost time or PPD.

24. Edith, a newly diagnosed diabetic, learned how to test her blood sugar. She brought her glucometer to work and checked her five co-workers' blood sugars just for fun. She lanced each person's finger using the same contaminated sharp. The company nurse discovered this and had them medically evaluated for bloodborne pathogen exposure.

- Recordable on OSHA Log? Yes No

Yes, 1904.8, contaminated sharps.....bad judgement doesn't play a role.

- Compensable under WC? Yes No

This may be considered a deviation from employment. However, for needle sticks injuries, the stick itself is a physical injury and reasonable and necessary diagnostic testing and treatment is paid. If there is less than three days of lost time, the injury is not reported.



