

Claims relating to suicide in the workplace governed by workers comp, experts say

Suicide generally is not a liability issue for employers, even if it is committed in the workplace, observers say.

Lawsuits in this area tend to be funneled into the workers compensation system, they say. Workers comp exclusivity provisions “by and large control” claims relating to suicide, said employment attorney Brian T. Ashe, a partner with Seyfarth Shaw L.L.P. in San Francisco.

And even in the workers comp system, “It’s not a claim that we see very often,” said Michael S. Brenton, a workers comp defense attorney with Murphy, Brenton & Spagnuolo P.C. in East Lansing, Mich.

There is “typically a fairly challenging proof burden for the plaintiff,” who could be a representative or a dependent of the employee, when there is a suicide claim, said Mr. Brenton. “Just like any other workers compensation case, it becomes very heavily dependent on what the facts are deemed to be” by the magistrate or administrative law judge, he said.

But with suicides, it can be challenging “to reconstruct what may have been going through the employee’s mind at the time of the suicide.” said Mr. Brenton. In the final analysis, the claim “must have some foundation in verifiable fact.”

Keith Bateman, vp of workers compensation at the Des Plaines, Ill.-based Property Casualty Insurers Assn. of America, said a number of states “deny compensation if you intentionally injure yourself.”

Florida’s workers compensation statute, for instance, states compensation is not payable if the injury was “occasioned primarily...by the willful intention of the employee to injure or kill

himself, herself or another,” said David A. McCranie, an Orange, Fla.-based independent workers comp defense attorney.

Experts say one exception to collecting workers compensation benefits after a suicide could occur if it comes after an injury that caused excruciating pain. In a 2008 decision, for instance, the Nevada Supreme Court ruled in *Sharon Vredenburg vs. Sedgwick CMS and Flamingo Hilton-Laughlin* that the widow of a bartender who committed suicide after he experienced unrelenting pain from a back injury suffered at work could collect compensation (*BI*, Aug. 3, 2008).

Jurisdictions differ, however, on the proof needed in these cases, Mr. Bateman said.

—By Judy Greenwald of Crain Communications

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