

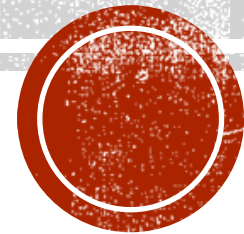
TOP TEN WC BIGGEST ISSUES FOR NON-WC ATTORNEYS

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1: THINKING / ASSUMING THAT AN EMPLOYER FILED AN INJURY REPORT WITH THE STATE ON BEHALF OF THE INJURED EMPLOYEE

- Employers will tell their employees they will file claims for them but either take their time or just won't do it
- Why not?
 - They are disorganized
 - They are malicious
 - They don't know what they are doing
- Why is this a problem? Because injured workers only have 1 year to file a WC claim



**1:
THINKING / ASSUMING
THAT AN EMPLOYER
FILED AN INJURY
REPORT WITH THE
STATE ON BEHALF OF
THE INJURED
EMPLOYEE**

- MFLG tells all injured workers to file a claim with the ICA no matter what, even if their employer claims they will do it for them.
- There is legislative hope
 - Arizona Senate Bill 1403 took effect 9/24/22 adding a section to A.R.S § 23-1061(N)
 - When insurance co. or self insured employer receives written notification of injury from an employee, they must forward the written notification to the ICA within 7 business days.
 - The failure to report by an insurance co could waive the SOL



2: THINKING THAT AN INJURED EMPLOYER CAN TAKE THEIR SWEET TIME IN SEEING A DOCTOR

Failure to “Forthwith report” a work injury by an employee can allow the employer to deny the claim.

1. Purpose – allows the employer to ensure that the employee receives prompt medical attention and do an investigation
2. When – within a “reasonable amount of time”



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3: THINKING/ASSUMING THAT AN EMPLOYER WILL FILE A CLAIM BASED ON A VERBAL REPORT BY THE EMPLOYEE



The majority of the time, if the report wasn't made in writing and it's not a catastrophic type of injury, the employer is going to try to dodge the claim to keep their premiums down.



Why is this a problem – proving injuries and meeting the SOL



MFLG tells all injured workers to report their injuries in writing to the employer.



4: THINKING/ASSUMING THAT JUST BECAUSE AN EMPLOYEE INCURRED A MEDICAL CONDITION AT WORK, IT'S COVERED UNDER WORK COMPENSATION (EG. HEART ATTACKS, STROKES)

Arising out of – important element

1. Causation:

- a. Must be an inherent or necessary risk that causes or contributed to the injury
- b. Need connection by the employment and the risk resulting in injury
- c. Origin of risk may be:
 - a. Distinctively work related
 - b. Wholly personal
 - c. Mixed
 - d. Neutral
- d. Nature of the risk may be:
 - a. Peculiar
 - b. Increased
 - c. Actual
 - d. Positional





5: THINKING/ASSUMING THAT SOMEONE DRIVING A COMPANY VEHICLE IS AUTOMATICALLY ELIGIBLE FOR WORKERS' COMPENSATION

Going and coming rule is the General Rule

Five Exceptions:

- a. Employer conveyance
- b. Pay for travel time and expenses
- c. Personal errand for employer
- d. Travel between premises
- e. On premises

Watch for *Joplin v. ICA*



6: THINKING/ASSUMING THAT AN INJURED WORKER CAN GET WAGES AND RECEIVE WORKERS COMPENSATION

While receiving temporary disability benefits, injured workers must report all “wages earned” to the insurance company.

What are wages earned –

1. W2 wages – Gross Earnings
2. Self employment earnings
3. Gig economy workers– Uber etc.
4. Unemployment Benefits



7:

THINKING/ASSUMING
THAT AN INJURED
WORKER IS DRUNK OR
HIGH IS NOT ELIGIBLE
FOR WC BENEFITS

- i. No fault system which is supported by AZ Const. Article 18, Section 8
- ii. *Grammatica v. ICA*
- iii. Caveat – they can be fired for using drugs, etc, on the job
- iv. *Grammatica* was a legal causation case – arising out of AND in the course and scope of employment



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8: THINKING/ASSUMING THAT AN INJURED WORKER CANNOT REOPEN THEIR WORKERS' COMPENSATION CASE

- i. Petition to reopen
- ii. Exception to res judicata
- iii. Must show “new, additional, or previously undiscovered condition”
- iv. Exceptions
 - i. Denied claims
 - ii. Full and final settlements



9: THINKING/ASSUMING THEY CAN SETTLE A THIRD PARTY PI CASE WITHOUT ANY INPUT/APPROVAL FROM WORKERS' COMPENSATION CARRIER

A.R. S. § 23-1023 controls

1. "Shall provide" the insurance carrier "periodic notice" of "all pleadings and rulings"
2. Insurance company also has the right to intervene to protect carrier rights
3. Compromise of any claim by employee less than WC lien at "amount less than the" lien "shall be made only with the written approval of the" carrier



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**10:
THINKING/ASSUMING
THEY CAN GET A
REASSIGNMENT OF THE
PERSONAL INJURY
CLAIM IN YEAR 1**

A.R.S. § 23-1023:

- 1.** Must file in year 1 if WC case
- 2.** Otherwise, reassignment happens in year 2 – if they want to do it
- 3.** Not controlled by the statute of frauds
- 4.** Reassignment vests claimant same rights as they had in year 1
- 5.** No obligation by WC carrier to reassign a claim



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