



LAW NOTES

from the Law Firm of

Kay & Andersen, S.C.

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What Every Employer Should Know

ABOUT WORK-RELATED INJURIES

Employers carry worker's compensation insurance to protect employees in the event an injury is sustained on the job. Disputes occasionally arise as to whether a particular injury was sustained on the job. One such situation was the subject of a recent Wisconsin Court of Appeals decision, Aurora Medical Center vs. LIRC, 2008 AP 103 (March 5, 2009), found at <http://www.wicourts.gov/ca/opinion/DisplayDocument.html?content=html&seqNo=35746>. In this case, a CT scan technician claimed to have injured his back while moving a patient from a gurney onto a CT scan table. The technician's treating physician concluded that the technician had pre-existing degenerative changes, although the work incident aggravated the condition and required surgery. At a hearing on the technician's claim, an Administrative Law Judge concluded that even though the technician had a pre-existing condition, the work-related incident was sufficient to aggravate the condition and result in a claim for a permanent partial disability. The employer appealed, and the Labor and Industry Review Commission concurred with the Administrative Law Judge, finding that the work-related incident aggravated the condition beyond its otherwise normal progression. The employer then appealed the case to the Circuit Court and subsequently the Court of Appeals. Although the employer suggested that the technician lied about the fact that he had made and cancelled appointments with a neurologist for neck pain and arm weakness prior to the injury, the existence of such symptoms would not defeat

the claim. Furthermore, the technician testified that he was injured on the date of his claim, and the doctor's report verified that he was treated for the injury shortly thereafter. The employer also argued that although the burden of proof lies with the employee to establish the existence of a work-related injury, the employer allegedly unfairly shifted the burden to the employer. The employer noted that the Administrative Law Judge stated his assumption that the employer had interviewed two of the technician's co-workers who were working with him on the day of the incident but had not called those witnesses to testify that the incident did not occur. The Court of Appeals concluded that this did not shift the burden of proof on the fact that the incident occurred. The Administrative Law Judge was simply noting that the employer had not offered potentially relevant evidence by failing to call witnesses who could have refuted the technician's testimony. Work-related injuries, like other potential claims involving employers, should be thoroughly investigated and documented. The Aurora case serves as a reminder to employers that diligent and prompt investigation of potential claims will help the employer should the claim result in litigation.

Kay & Andersen, S.C. has substantial experience in helping employers deal with legal issues arising from their business operations. Feel free to call us with any of your legal needs.

Kay & Andersen, S.C.

One Point Place, Suite 201

Madison, WI 53719

Phone: (608) 833-0077

Fax: (608) 833-3901

Web Site: www.kayandandersen.com

E-mail: law@kayandandersen.com

Robert J. Kay

Randall J. Andersen

Robert A. Mich, Jr.

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