

## **Indiana Guide to Workers Compensation Benefits**

### **Elements of Compensability**

Employers must pay the compensation and benefits provided under the Act when the following four elements of a worker's compensation claim are met (see Ind. Code §22-3-2-2). If the employer/carrier denies a worker's compensation claim and the dispute is heard by the Board, the employee has the burden of proving each of the elements.

1. [personal injury or death;](#)
2. [by accident;](#)
3. [arising out of the employment;](#) and
4. [in the course of employment.](#)

"Injury" and "personal injury" mean only injury by accident arising out of and in the course of employment and do not include a disease in any form except as it results from the injury. Ind. Code §22-3-6-1(e).

"By accident" means that the injury was unexpected. To occur "by accident," the injury may be either an "unexpected event" or an "unexpected result." Under the first theory, an identifiable event occurs and causes an injury. For example, a worker slips and falls on a freshly waxed floor, spraining an ankle. Under the "unexpected result" theory, the injury to the employee may be the combined injurious effect of repetitive motions. For example, a secretary may develop carpal tunnel syndrome as a result of typing over a period of time. The definition of "by accident" as both an unexpected event and an unexpected result means that a broad range of injuries is potentially compensable in Indiana.

An injury "arises out of the employment" when there is some causal relationship between the injury sustained and the duties or services performed by the employee. This causal relationship is established when a reasonably prudent person considers an injury incidental to employment at the time of entering into it or when the facts indicate a connection between the condition under which the employee works and the injury.

"In the course of employment" means that the accident causing injury occurred at a time and a place at which the employee would reasonably be expected to be.

### **The Exclusive Remedy Provision**

As discussed in the introduction, the worker's compensation system was designed to replace the civil lawsuit as the means of recovering damages for work-related injuries. In Indiana, worker's compensation is the employee's "exclusive remedy" against the employer where there is personal injury or death by accident arising out of and in the course of employment. In other words, if there is personal injury by accident arising out of and in the course of employment, the employee must pursue any claim against the employer through the worker's compensation system. Ind. Code §22-3-2-6.

The Worker's Compensation Act *does not* bar lawsuits against parties (other than the employer or co-employees) who are responsible for work related injuries or who cause injuries independent of those covered in the Act. Ind. Code §22-3-2-13. For example, a delivery driver who is injured in a car accident may be covered by worker's compensation and may sue the driver of the other vehicle for civil damages. The employer/carrier would be entitled to reimbursement of amounts paid under the Act from any third party proceeds. See Third Party Lawsuits, page 54.

*Effective July 1, 2000, IC 22-3-6-1, along with the language regarding lessors, now includes in the definition of employer the parent company of the employer and its subsidiaries.*

### **Examples of Injuries that May be Covered**

[Intentional injuries by the employer](#)

[Repetitive trauma](#)

[Assaults by co-employee](#)

[Horseplay](#)

[Personal needs](#)

[Parking lot injuries](#)

[Ingress and egress](#)

[Heart attack](#)

[Hernia](#)

[Heat](#)

[Psychological trauma/mental stress](#)

[Blood-borne pathogens \(HIV, Hepatitis\)](#)

[Lightning; other natural phenomena](#)

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The following types of injuries are included as examples to demonstrate the wide range of circumstances under which injuries may be covered by worker's compensation. These examples are general and do not mean that a particular injury will or will not be compensable. The compensability of a claim always depends on the specific facts of the individual case.

***Intentional Injuries by the Employer*** are not considered to occur "by accident" in Indiana and therefore would not be covered. The worker might have cause for a civil lawsuit in such a situation. However, this kind of case is extremely rare because the injury would have to be caused *by the employer itself*, not merely by a manager,

supervisor or foreman. Injuries intentionally caused by managers, supervisors, or foremen are generally covered by worker's compensation.

***Repetitive Trauma*** injuries such as Carpal Tunnel Syndrome may be compensable in Indiana, if they can be shown to arise out of and in the course of employment.

***Co-Employee Assaults*** The aggressor, if injured, is usually considered to be outside of the course of employment. The innocent victim of an assault by a fellow employee is generally covered.

***Horseplay*** A worker injured while participating in horseplay is not entitled to worker's compensation unless he is an innocent victim of another person's horseplay. However, if the employer acquiesces in the horseplay (allows the horseplay to proceed without intervening), the injury may be compensable.

***Personal Needs*** Activities undertaken for the employee's personal needs, comfort, and convenience are considered within the course of employment. In other words, injuries occurring when the employees get up to get a drink or a snack, to stretch, or to go to the bathroom, are probably covered.

***Parking Lot Injuries*** in parking lots owned by the employer are generally considered to be covered, even if the accident occurs before the employee clocks in or after the employee clocks out.

***Ingress and Egress*** The time required to enter and exit the employment premises is generally covered. Injuries occurring in employee parking lots are generally within the course of employment.

***Heart Attack cases*** can be proven under worker's compensation if the worker can show that there was some kind of unusual stress or exertion that triggered the heart attack.

***Hernia cases*** can be compensable under worker's compensation where it can be shown that a work injury caused the hernia or materially accelerated the occurrence of the herniation.

***Heat Stroke, Heat Prostration, and Sunstroke*** injuries may be compensable if the employment puts the worker at a greater risk for such injuries than the general public.

***Psychological Injuries/Mental Stress Injuries*** are potentially compensable in Indiana.

- A physical injury caused by psychological trauma is potentially compensable assuming that the stimulus or stress arises out of and in the course of employment.
- Where there has been a physical worker's compensation injury and the injured worker's disability is prolonged or impairment is increased by accompanying psychological dysfunction, the full extent of disability and impairment may be compensable.

- Preexisting psychological shortcomings and weaknesses of the injured worker which are aggravated or precipitated by physical injury and trauma may be found to be compensable to the full extent of the aggravation of the pre-existing psychological dysfunction.

***Exposure to Blood-Borne Pathogens (HIV, Hepatitis)*** There is some uncertainty as to the compensability of these exposure cases because no Indiana worker's compensation case has yet addressed the issue of exposure to HIV, although hepatitis exposure arising out of employment has been held to be compensable. However, other state worker's compensation systems that have addressed the issue uniformly provide diagnostic testing under worker's compensation if an employee is stuck with a needle, splashed with blood or body fluids, or otherwise exposed to risk of a blood-borne infection, as long as the exposure arises out of and in the course of employment.

***Lightning, other Natural Phenomena*** Injury by lightning or other such natural causes may be compensable if the employee's risk of being so injured is greater than that of a person not so employed; that is, if the course of employment puts the employee in a place that is more likely to expose him to injury from the elements than would other places in the vicinity.

***On-Call Employees*** summoned to work are generally considered to be in the course of employment.

***Deviation from Route*** If the employee deviates from work activities and an injury occurs, the injury may not be considered to arise in the course of employment. If the employee deviates from a route for personal reasons, even if the employee is on company time, or in a company vehicle, the employee might be considered outside of the course of employment. However, as soon as the employee returns from the deviation, he or she is back in the course of employment.

***Lunch Period*** A very general rule on injuries occurring on an employee's lunch hour is that the employee is covered while eating lunch on the employer's premises and at a place generally considered safe with employer's consent. But if the employee leaves the premises for lunch, coverage ceases unless the employee leaves at the direction of the employer.

***Recreational Activities, Employer-Sponsored Parties*** Injuries occurring at recreational activities connected with the employment where attendance is encouraged or mandatory may be compensable where the activity is sponsored by the employer, and where the event produces some benefit to the employer. Injuries may not be compensable if the activity is undertaken voluntarily by the employee.

***To and From Employment*** Employees are generally not covered while traveling to and from work, if the place of employment is at a fixed location. However, travel to remote work sites may be compensable. If an employee is injured while being transported to or from work or work sites in vehicles provided by the employer, they are probably covered.

Accidents occurring while traveling to or from work in the employee's personal vehicle may be covered if the travel is required for work, such as home solicitations.

***Traveling Employees*** such as salespeople are covered while traveling.

***Work Outside of Scheduled Hours*** An injury occurring outside of work hours can still be found compensable if it is caused by the employment and if it occurs at a time and place where the employee might reasonably be found, for example performing tasks at the direction of the employer.

***Aggravation of Existing Condition*** The aggravation of an existing condition by an injury arising out of and in the course of employment is generally compensable.