

Workers Compensation Webinar – HOT TOPICS

You can also visit our website. [Workers Compensation Webinar Series](#) for the recording and any future webinars with Epic Brokers.

The answers below are from RTGR Law and for educational purposes and do not constitute legal advice. Consult with legal counsel as to particular situations. Answers may vary based on facts.

1. So, if an employee is lawfully using a prescribed controlled substance (like pain meds) and then gets hurt, that does not count as an affirmative defense?

Correct, the affirmative defense of intoxication does not apply to lawfully used substances other than alcohol.

2. What if drug-free workplace is a company policy and they come in "high" from a break and then get hurt, even though California says marijuana is legal?

Depending on the circumstances, employee discipline may be appropriate under employer policy, but the affirmative defense of intoxication does not extend to lawful use of substances other than alcohol.

3. If the employee is intoxicated with alcohol, how do you prove it if they took it before coming to work?

Evidence can be presented from witnesses, and it would be important to have medical evidence that the employee was intoxicated such as a medical opinion based on testing.

4. We are a high-risk industry and have a zero-tolerance drug and alcohol policy. During the post-accident d/a test, employee d/a result is +, can he get terminated for this reason?

It is appropriate to terminate an employee for failure to comply with employer policy whether the employee had a work injury or not, provided the policy is equally applied to those with work injuries and other employees.

5. What's the difference between constructive notice and actual notice of termination?

For the post-termination defense, actual notice of termination is required. Constructive notice assumes the person knows something, which is generally not enough for this defense.

6. For the medical records, does this apply to a known medical issue on the group health plan, via accommodation, or through another means?

Any type of medical record addressing the injury before the notice of termination is generally enough to provide an exception to the post termination defense.

7. What if employees have dogs at work on/off leash and one employee sustains a dog bit requiring stitches?

This would be a compensable work injury absent unusual circumstances.

8. Concerning business trips when she said that it would include time at the hotel and dinner this would be industrial, this means that any injury that occurs during the trip would be considered work-related, but does it also mean that they have to also be paid for their time at dinner and at the hotel then?

Employers are not required to pay employees for time off spent eating meals or at the hotel, provided they are not performing work duties during the time off.

9. Do you have any advice regarding the Workplace Violence Prevention Plan that starts on July 1st? Have you heard of any company getting an exemption from the plan?

Cal/OSHA's model written Workplace Violence Prevention Plan is a good place to start, available at <https://www.dir.ca.gov/dosh/Workplace-Violence/FAQ.html>. There are exemptions, such as for some healthcare facilities, locations with fewer than 10 employees and no public access, and employee telework locations if at the employee's choice and not under control of the employer.

10. If an employee is off work due to a work-related injury and the employee also has 6 weeks left FMLA/CFRA due to baby bonding. Is the work-related injury counted towards the unused weeks from FMLA/CFRA?

It is appropriate to count time off due to a work injury against available FMLA/CFRA time if medically supported.

11. How should you go about investigating a claim if the claim is stressed and allegedly caused by the HR dept.

Interview HR dept. management, preferably by an attorney to protect confidentiality, to develop facts that can be compared against the employee's allegations.

12. For subpoenas: What about sign-in sheets for safety or other on-site training? There would be other employees' names and signatures on this sign-in sheet. Should we supply this if it has the subpoenaed employee's signature and name on it?

It is appropriate to provide sign-in sheets in response to a subpoena. If there is sensitive and confidential information about other employees, the employer can consider redacting that information. A simple record of other employees attending would not typically be sensitive and confidential.