

Accidents Happen

How Can You Protect Your Employees and Your Business?



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General Overview North Carolina Injury Law and the Role of Insurance

- Workers' Compensation vs. Third-Party Liability

Workers' Compensation Basics

- Workers' compensation claims exist when an employee is injured in the course and scope of employment.
- There does not need to be negligence (i.e., someone does not need to be at fault).



Workers' Compensation Basics

- The North Carolina Workers' Compensation Act requires that all businesses that employ three or more employees obtain workers' compensation insurance or qualify as self-insured employers for purposes of paying workers' compensation benefits to their employees.
- An employer does not avoid liability under the Act by calling its employees "independent contractors."





NC Negligence Law Basics

- There also are separate claims when someone is at fault (i.e., liable). These are negligence claims.
- Key issue under NC negligence law: Is someone legally liable?
- Once negligence is established, the negligent party typically is liable for any damage their negligence caused.
- There are potential defenses.
- There can be multiple liable parties.

The Role of Insurance

- Auto Insurance
- Commercial General Liability (CGL) Policy
- Excess Policies
- Workers' Compensation





Vehicle Issues, Including Car Wrecks and Employer Liability



John works for a general contractor in Wilmington, NC. It's Saturday morning. He gets into his company-owned truck. He decides to bring his 4-year old daughter Addie with him. They go to Dunkin Donuts and buy some breakfast—she gets a pink donut with sprinkles. He then drives to Lowes to get some materials for work on Monday. On the way, Addie drops the donut on the truck floor, distracting John. John rear-ends a car in front of him, causing serious injuries to the other driver.

Is the general contractor liable for the injuries to the other driver?

Yes, the general contractor is liable.

No, the general contractor is not liable.

It depends.

Same facts. But, the wreck happens on the way to the donut shop. Is the general contractor liable?

Yes, the general contractor is liable.

No, the general contractor is not liable.

It depends.

Same facts. But, John is driving his personal car. Is the general contractor liable?

Yes, the general contractor is liable.

No, the general contractor is not liable.

It depends.

Liability

- At-fault driver is always liable
- Employer liable if at-fault driver acting as an agent
- Insurance:
 - The insurance policy on the vehicle itself will apply first
 - Then the at-fault driver's insurance, if different
 - If company liable, broader coverage may kick in





If an Accident Happens, Report It

- Report it to law enforcement, at the scene.
- And, report it to your insurance company (even if it is a small one, or one you may just pay on behalf of the company yourself)
 - Early reporting to the insurance company is important, including for coverage issues



How to Mitigate Risk

- Hire good people who are going to drive responsibly if acting as your agent
- Have adequate insurance
- Titling the vehicles
- Have proper company policies in place about when using company vehicles, doing work for company "off the clock," etc.

Alcohol!

- Have proper policies in place
- Don't let non-work events look like work events
- What about official work events (dinners, meetings, parties, etc.?)
- If it is truly a company event, be careful.





Workplace Safety

Reporting Requirements

- Employers must report any worker fatality within 8 hours and any amputation, loss of an eye, or hospitalization of a worker within 24 hours.





How to Handle an OSHA Inspection

- Pull records for OSHA's review
- Do not disturb accident scene/work area
- Limit scope of investigation, if possible
- Document and take own pictures
- Representation during management interviews/inspection
- Interview rank and file witnesses after OSHA leaves
- DO NOT RETALIATE (R.E.D.A. – double damages and attorneys' fees)

Appealing the Citation(s) and Litigation

- Employers can either contest a citation or penalty or request an informal conference within 15 working days of receipt of a citation. Always request an informal conference.
- Next step: Send in Notice of Contest to N.C. Occupational Safety and Health (OSH) Review Commission



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