Catastrophes in the Workplace: How to Handle Catastrophic Injury and Death Claims

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The events of September 11, 2001 were the worst workplace catastrophes in United States history. Nearly 3,000 people lost their lives, including 2,752 in the World Trade Center. Many people were fortunate to escape without injury that fateful day. Almost 6,300 reportedly received treatment for injuries they received, however. Of the injured, the lucky ones suffered only minor injuries. Many suffered very serious and catastrophic injuries.

While the American workplace is safer than ever, hardly a week goes by without a news report concerning a plant explosion, a chemical release or a fatality arising out of a workplace accident. It is every employer’s goal to avoid the workplace catastrophe, and most succeed. However, it is important to make sure every employer has a plan in place and that the appropriate steps are taken following a workplace catastrophe. Plans must also be made for those catastrophically or fatally injured as a result of the catastrophe. Fatalities, injuries to employees and other traumatic events generally require an immediate and decisive response.

This article will address the issues facing employers and steps to take in the event of a workplace catastrophe. It assumes that any injuries and/or deaths arose out of and in the course of employment, and therefore, are compensable under the Georgia Workers’ Compensation Act.[1]

There is hardly anything more difficult for an employer than the loss of life in a workplace incident. Notifying the family members of the victim, counseling other employees and trying to return the business to a sense of normalcy can be extremely challenging. From a workers’ compensation perspective, however, the compensable death case is fairly straightforward.

There are essentially three types of benefits which may be recovered under the Georgia Workers’ Compensation Act as a consequence of a deceased employee’s compensable death: (1) the reasonable expenses of the employee’s last sickness; (2) burial expenses; and (3) weekly dependency benefits.[1]

An employer’s liability for the employee’s last sickness is no different than a compensable occupational injury. The employer is obligated to pay, within the limits of the fee schedule, for authorized and reasonably necessary medical treatment and other health care.[2] In addition to any other pre-death compensation, the employer must pay reasonable burial expenses not to exceed $7,500.00.[3] If death results instantaneously from the accident, and if the employee leaves no dependents, the burial expenses and a $10,000.00 payment to the State are the only payments made for the death of the employee.[4]

The employer must pay the dependents of the deceased employee – dependents who are wholly dependent on the deceased earnings at the time of the injury/death and only as long as they remain dependents – a weekly compensation equal to the compensation that would have been paid to the employee for temporary total disability benefits. A child of a deceased employee is presumed wholly
dependent if: (1) the child is under 18 or enrolled full time in high school; (2) the child is over 18 and is physically or mentally handicapped; or (3) the child is under the age of 22 and is a full time college student.[5]

Finally, if the deceased employee leaves no dependent children but does leave a surviving spouse, benefits are capped at $150,000.00.[6] However, the surviving spouse's entitlement to death benefits ends with the surviving spouse's own death, remarriage, or with his or her cohabitation in a "meretricious relationship."[7]

Catastrophic injuries create burdens on both the employer and the workers' compensation insurance carrier which are not present in a death case. First, the employer and insurer need to assess whether or not the employee's injury is legally a workers' compensation catastrophic injury. A catastrophic injury is defined as: (1) a spinal cord injury involving severe paralysis of an arm, leg or the trunk; (2) amputation of an arm, a hand, a foot, or a leg involving the effective loss of use of that appendage; (3) severe brain or closed head injury; (4) second or third degree burns over 25 percent of the body as a whole or third degree burns to 5 percent or more of the face or hands; (5) total or industrial blindness; and (6) any other injury of a nature and severity that prevents the employee from being able to perform his or her prior work and any work available in substantial numbers within the nation's economy for which the employee is otherwise qualified.[8]

Categories (1) through (5) above are obvious catastrophic injuries even to a layman. However, the so-called "social security" catastrophic designation is not so obvious.[9] Catastrophic designation of a workplace injury which meets the requirements of category (6) above is often one of the most fiercely litigated issues in workers' compensation claims. It rarely occurs at the time of the accident and may not occur until years later. If the employee's injury is designated catastrophic, the employee, in addition to medical treatment and rehabilitation services, is entitled to collect temporary total disability benefits for the remainder of her lifetime. However, when the workplace injury is obviously catastrophic, the employer must appoint a registered rehabilitation supplier within 48 hours of the employer's acceptance of the injury as catastrophic. If the State Board makes the determination that an injury is catastrophic, the employer has 20 days from the date of notification to appoint a registered rehabilitation supplier.[10] The State Board appointed Rehabilitation Supplier is paid by the employer and its insurer but is responsible for looking after the needs of the catastrophically injured worker.

Conclusion

While workplace deaths and catastrophic injuries are generally few and far between, they require immediate and specific actions on the part of the employer and insurer. Employers can effectively deal with workplace fatalities and catastrophic accidents, but only through proper planning and execution. In fact, effective planning may help reduce the pain and suffering suffered by the surviving family and co-workers, while at the same time allow the employer to resume normal operations quicker and reduce the financial and potential legal burdens placed on the company.

This article is not intended to provide "legal advice" on the issues discussed in it. The article is provided for the purpose of information. The reader should contact an attorney who is knowledgeable in this specific area of the law about their specific situation before acting. For other articles of interest to insurance agencies and agents, please see the website of Goodman, McGuffey, Lindsey & Johnson, LLP, at www.gmlj.com.
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[9] It is called the “social security” catastrophic designation because it is based upon the Social Security disability standard.