

Exclusive Remedies: Exceptions?

The following are examples of actual cases in which courts around the country have interpreted the “exclusive remedy” provisions of state workers’ compensation statutes and determined whether the employee was allowed to sue the employer or not for injuries caused by the employer’s gross negligence or intentional behavior.

In which cases were the employees or their dependents allowed to sue and in which cases did the courts say the workers’ compensation statute was the exclusive remedy? (See below for answers.)

1. Birthday Spanking

An employee claimed that he sustained both back injuries and psychological injuries when his coworkers wrestled him to the ground, held him down and gave him a “birthday spanking” with a paddle made from a 2 x 4. The employer knew about the tradition of giving such “spankings” and did nothing to prevent the occurrence. Did the workers’ compensation “exclusive remedy” rule provide immunity to the employer for tort liability in this case?

2. Partial Amputation of Hand

An employee underwent the partial amputation of his right hand as a result of attempting to clean molten plastic from a molding machine while the machine was running. The employee claimed that the employer required the employees to clean the machine while it was operating because it cost less. The employer also allegedly refused to let employees use safer methods and to equip the machine with a device that could have prevented injury. Was this employer afforded immunity from the lawsuit by the “exclusive remedy” rule?

3. Prior Citations for Violation of OSHA Regulations.

The employee was working in a trench when it collapsed, burying him alive, and causing his death. A safety device called a “trench box” was on site, but the worker wasn’t using it. Previously, the employer had been cited twice for violating OSHA regulations for failing to require the use of these same boxes. Were the relatives of this worker allowed to pursue a wrongful death lawsuit against the employer?

4. Employer Requested that Employee Ignore OSHA Warning.

An employee was injured while moving some very heavy equipment by hand. The employer had requested that the equipment be moved by hand. The equipment had an OSHA warning imprinted on it warning that it should not be moved by hand. Was the employee allowed to pursue a lawsuit as an exception to the “exclusive remedy” rule?

5. Security Guard Shot

The family of a security guard who was killed during a robbery while he was transporting cash receipts brought a lawsuit against the employer for wrongful death. Was the lawsuit allowed to proceed?

6. Refinery Explosion

An employee of a refinery which experienced an explosion suffered extensive injuries, including burns and broken bones, when he jumped off a burning tower. Was he allowed to pursue a lawsuit against his employer using the “intentional” exception to the “exclusive remedy” rule?

7. Same Refinery Explosion

The survivors of three workers who were killed in the same explosion described in #6 sued on the theory that their loved ones were not employees but subcontractors of the refinery. Was their lawsuit allowed to continue?

Answers

1. Yes. The worker’s exclusive remedy was workers’ compensation because the employer did not “intend” the injuries.
2. No. The court in this case allowed the lawsuit to proceed because it was up to the jury to decide whether the employer’s actions were “intentional,” and thus outside the “exclusive remedy” rule.
3. No. The court in this case decided that the strict interpretation of the “actual intent” exception was appropriate and that the employer did not intend the death of the worker.
4. No. The court concluded that even if the employer believed someone would likely get hurt moving the equipment by hand that the employer’s intent did not rise to a level high enough to fall within the exception of the “exclusive remedy” rule.
5. No. The court decided that the danger of a security guard being shot and killed is simply part of the job. Thus, even if the employer was negligent or reckless, the employer’s intent did not rise to the level necessary to negate the “exclusive remedy” rule.
6. No. Because he was an employee, even if he could have proved a higher level of negligence by the employer, he could not avoid the “exclusive remedy” rule without being able to show that the employer’s actions were “intentional.”

Note: this worker had been earning more than \$1,000 per week. He received \$490 per week in workers’ compensation temporary disability benefits. He will never be granted higher benefits than this even if he is found to be 100% totally and permanently disabled. If he is found to be even a small fraction of a percent less than totally disabled, his benefits will be cut to \$230 a week for a limited period, not for life.

6. Yes. Because the workers who were killed were subcontractors, their loved ones were allowed to pursue an action for negligence against the employer.

Note: the survivors of these workers were eventually given an award of a total of \$21 million against the employer who was found to be negligent.