



## Workplace Assaults: Are they compensable workers' compensation claims?

by

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Workplace assaults raise many complicated, costly and dangerous issues. If the assault results in an injury to an employee, you will have to ask, **“Is this a compensable workers’ compensation claim?”** As is often the case in workers’ compensation law, the answer is a firm **“maybe.”** This article summarizes the general guidelines for evaluating assaults as potential workers’ compensation claims.

The primary question you have to ask initially, is **“Why did the assault happen?”** Was it a fight with a manager over a job task? Was it a fight between two employees over a dating or spousal incident that happened at the bar the night before? Was the assault unrelated to anything, such as where a drunk or lunatic off the street simply attacks one of your employees? The answer to the “why” question is the key to whether the assault will be considered compensable or not.

An injury “arises out of” employment when there is a causal connection between the work conditions and the injury. In considering this the Colorado Supreme Court has divided assaults into the three general categories:

1. **Work Disputes:** This category is the most common and involves injuries resulting from assaults that have an inherent connection with the employment. Some examples are arguments over performance of work, possession of work tools or equipment, delivery of a paycheck, quitting or being terminated, or mediating between quarrelling co-employees to name a few. Because these assaults “arise out of” the employment and employment relationship, **these are usually found compensable.**
2. **No Identifiable Dispute:** This category is less common and involves injuries resulting from assaults that are neutral, or random. This category is often called the **“roving lunatic rule”** because these assaults have no cause related to the job, or in some cases no cause that can be identified at all. Attacks by lunatics, drunks, children, criminals, and other similar situations are found in this category. In these cases the injury to the employee is not related to the employment, but rather to just being at the wrong place at the wrong time when the lunatic attacked. Had any other employee been in the position of the injured worker, he too would have been attacked and injured. Although this category does not seem to specifically involve the employment, **these are usually found compensable.** The logic for this may seem a bit strained but has to do with the concept of the positional-risk concept: **Your job put the employee at wrong place, at the wrong time.**
3. **Personal Disputes:** This category involves injuries resulting from assaults that are based on private, non-work issues. These disputes typically arise from arguments that are imported into the workplace from claimant’s domestic or private life. Examples include disputes regarding an employee’s spouse, girlfriend, kids, religious beliefs, political views, just to name a few. In short, **if it sounds like a “personal thing”** that should have been left at home, **these will usually be found not compensable.**

So when evaluating whether or not a workplace assault implicates your workers' compensation policy you need to fully understand the reasons why the assault happened. You will need to interview the participants (if possible) and get to the bottom of it. As always, document and get witness statements as soon as you can. If the argument and assault is over a work issue, or no issue at all, it is most likely a compensable claim. If it is all personal, it most likely is not compensable. In all cases contact your carrier or your attorney right away and run the facts by them to determine if a claim needs to be filed. Sometimes the facts blur together and the analysis is not that simple. As always, feel free to contact me at 303-575-8096 for any advice.

**\*\* Note: The information contained in this document does not convey legal advice of any kind. Please consult your attorney for advice on the application of the law to the specific facts of your case or legal problem.**

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