

# Arising Out Of And In the Course Of Employment – What Does That Mean?



The Northwest Territories and Nunavut Workers' Safety and Compensation Commission ("WSCC") will compensate an employee for injuries, diseases or death ("harm") which arises out of, and is suffered in the course of the employee's employment. Similar language is used by other workers' compensation commissions as well.

For employers who have people working for them and travelling to remote worksites, this should raise some alarm bells around liability issues. When is an employee considered "on the job" and if an accident occurs, did that accident happen as part of the job or outside of what is considered the employee's duties?

The dictionary tells us that "arising out of" refers to what caused the harm, and "during the course of" refers to the time and place of the harm and its connection to the worker's employment.

## **Arising Out of Employment**

In the NWT and Nunavut, the WSCC has a policy which provides that harm arises out of an employee's employment when it is caused by a work hazard. In determining whether the harm was caused by a work hazard, the WSCC will decide on a balance of probabilities whether the harm would have occurred without the contribution of the work hazard. The WSCC decides whether the harm suffered by the worker occurred because of some aspect of the everyday requirements of that worker's employment. The link between the harm suffered and the work hazard must be direct and objectively verifiable.

## **During the Course of Employment**

The WSCC policy also requires that for harm to be compensable, it must have occurred during the course of employment. This means that harm to an employee will be considered to have occurred "during the course of their employment" when it occurs at a time and place consistent with the obligations of that employment. However, it is important to note that it is not necessary for the harm to occur solely during the normal hours of work or exclusively on the employer's premises, but a relationship between the employment expectations and the time and place of the harm must exist.

## **Disqualification of Activities**

Harm to an employee is generally compensable when the employee is engaged in the performance of a work-related activity that is incidental to the employee's employment. If an employee is harmed while engaged in an activity that is unrelated to their employment, the claim may be disqualified.

This does not mean that any break from performing "work activities" to perform a "personal activity" will necessarily mean that an employee has left the course of his/her employment. The factors which the WSCC will consider in determining whether the personal activity occurred in the course of employment are:

- 1) The duration of the activity;
- 2) The nature of the activity; and
- 3) The extent to which the activity deviated from the worker's regular employment activities.

The factors are considered in the context of the nature of the work, the nature of the work environment and the customs and practices of the particular workplace.

For employers, this still creates many difficulties. If an employee is injured while flying into a remote site to work, that injury would very likely be found to have arisen in the course of the employee's employment.

Other instances would not be as easily determined. What about an accident that occurs on the drive to the airport, on a road which otherwise the employee would not be driving on? What about food poisoning which comes about from the employee eating something at the airport restaurant while waiting for the flight, which was delayed? These cases will be determined on each individual circumstance.

It is important that employer's be aware that all workplace accidents need not occur while an employee is "on the job".

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