

Worker Permitted to Sue "Executive Officer" who "Massaged" Her Neck



Physically demonstrative managers beware: your company's workers compensation coverage does not necessarily protect you from lawsuits by employees.

Even though her employer had Workplace Safety and Insurance Board coverage, an employee was entitled to bring a lawsuit against an executive who "massaged" her neck, allegedly injuring her, Ontario's Workplace Safety and Insurance Appeals Tribunal has ruled.

However, the Workplace Safety and Insurance Act prohibited her from suing her employer for the neck injuries.

The employee alleged, in her court action, that the executive officer had injured her when he manipulated her head and neck without her consent, thereby committing assault and battery. The worker had a prior neck condition affecting her shoulder.

The executive officer was known to be physically demonstrative and had been warned by the employer's human resources manager not to touch employees or customers unless it was necessary.

The WSIAT decided that because the employee was in the course of her employment at the time of the injury, she could not sue the employer.

However, she would be permitted to sue the executive in the courts if she could prove that he was not acting in an employment-related capacity when he massaged her neck.

The WSIAT decided, on the facts of this case, that in administering the massage, the executive "deviated substantially from his regular activity as an executive officer". The conduct had nothing to do with his work duties, which was shown by the warning from the human resource manager. As such, he was not acting in an employment-related capacity when he massaged her neck, and the employee was permitted to sue him in the courts.

Decision No. 727/13, 2014 ONWSIAT 1128 (CanLII)

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Article by Adrian Miedema