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Workers' Compensation Alert

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Winter Weather Workers' Compensation Advisory: The Forecast Calls for Slips and Falls in the Company Parking Lot

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'Tis the season for icy conditions in and around the Company parking lot and employee entrances. Each year these conditions result in serious injuries and costly workers' compensation claims. Preventing and defending these claims can be extremely difficult and requires a healthy dose of common sense as well as a familiarity with applicable law.

Preventing Winter Weather-Related Injuries

First, the common sense part. In analyzing one of our clients' most serious work-related injuries (and mostly costly workers' compensation claims) – some common characteristics emerged: the injured employees were female, middle-aged, had pre-existing health conditions, and either slipped or fell in wintry conditions while walking to or from their vehicles in the employee parking lot. The employees' underlying pre-existing, degenerative conditions complicated treatment, led to numerous other conditions and delayed or altogether prevented a return to the workforce. The one factor under the complete control of the employer in this scenario was the condition and location of the employee parking lot. The employer (astutely) took the following common sense steps to prevent future injuries: (1) studied the routes from the designated employee parking areas to the facility and modified those as appropriate (either to reduce the likelihood of employee encounters with weather-related hazards or move the areas closer to the entrance); (2) ensured that the new parking areas were free from potential hazards (by, for instance, repaving or patching the parking areas to eliminate holes and uneven pavement); (3) ensured that the employee parking areas received priority attention in terms of plowing and salting; and (4) installed a canopied walkway from the employee parking areas to employee entrances. The foregoing created a safer parking area for employees and reduced workers' compensation claim costs. Other common sense suggestions include: (1) installing/improving lighting in employee parking areas; (2) issuing tips to employees for avoiding weather-related injuries; and (3) revising Company policies and procedures to make it easier for employees to don, doff and store winter apparel (particularly winter footwear so that employees feel comfortable wearing the appropriate shoes or boots).

Unfortunately, despite an employer's best efforts to prevent winter-related injuries, parking lot injuries will still occur. For example, one of our clients allowed an employee to park in a handicapped parking spot located within 10 feet of the door to the facility. Due to the curb opening, there was a minimal, if any, step down into the parking lot and the parking area was well salted as a precaution-

ary measure as snow was in the weather forecast. Despite all of these preventative measures, the employee's leg gave out resulting in a fall and subsequent trip to the emergency room. She filed a claim and appeared at the hearing arguing, incredibly, that she tripped on the salt. These are the types of claims where employers should consider Plan B – contesting the claim.

Legal Defenses to Weather-Related Claims

Most times, a slip and fall while traversing to or from work to a vehicle in the employee parking lot is compensable – meaning that it occurs in the course of and arising out of employment. There are, however, several important exceptions. For instance, a claim will likely not be compensable if the slip and fall occurred on a public sidewalk, street or in a parking lot not designated by the employer for parking so long as those areas are not otherwise under the control of the employer. For example, in one case, a corrections officer slipped and fell on an icy sidewalk in front of the county jail (her place of employment) just before her shift started. Evidence showed that the city (not her employer) controlled the public sidewalk. A court ruling on the issue denied the employee's workers' compensation claim finding that the "coming and going rule" applied to bar her claim. The "coming and going rule" generally bars claims of employees injured traveling to or from their fixed place of employment unless the employer creates a special hazard or risk of injury to the employee or unless the injury occurs while the employee is in the "zone of employment." Therefore, it is important to obtain specific information as to exactly where the incident occurred, determine who exercises control over the area (i.e., who shovels the snow?) and review the employer's parking policies and practices before making a determination regarding compensability.

Additionally, after investigation, many parking lot slip and falls may actually result from various pre-existing degenerative conditions. One clue that pre-existing conditions may be involved in the claim is when employees make statements to emergency personnel such as "my leg just gave out." With these types of claims, it is imperative to obtain treatment records to rule out the presence of pre-existing degenerative conditions. If such conditions exist, the claimant must establish that the pre-existing condition did not cause the injury.

Finally, in rare circumstances, parking lot injuries may be caused by horseplay (think snowball fights) and are not compensable for that reason.

In sum, it is a good time of year to review or re-evaluate employee parking lot conditions and employee parking policies. When slip-and-fall incidents occur, thoroughly investigate the scene immediately and evaluate potential legal defenses with counsel.

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