

Are Store Employee's Injuries Caused by Shoplifter Compensable?



SITUATION

A grocery store clerk is taking a cigarette break outside the front doors of the store, chatting with a manager who just finished his shift. A second manager comes out of the store, asking if they saw a suspicious man with a cart full of unbagged groceries. The man's in the public parking lot, unloading the groceries into his car. Despite a store policy that forbids confronting shoplifters, the on-duty manager, with the clerk and off-duty manager in tow, asks the man if he has a receipt. The man ignores them and gets into the driver seat. During the confrontation, the thief begins backing up the car while the driver side door's still open. The open door knocks the clerk to the ground and, as the shoplifter drives forward to escape, he runs over the clerk. She's severely injured and can no longer work. So she sues the store and the on-duty manager. The store and manager claim her lawsuit should be barred because workers' comp applies. The parking lot where the clerk was injured isn't owned or rented by the store but is the property of the store's landlord.

QUESTION

Does workers' comp apply to the clerk's injuries and thus bar her lawsuit'

- A. Yes, because the injuries occurred during her work hours.
- B. Yes, because she was on the store's premises when she got hurt.
- C. No, because the injuries didn't arise during the course of her employment.
- D. No, because shoplifting is a criminal act and thus unrelated to workers' comp.

ANSWER

C. The clerk wasn't acting in the course of her employment in pursuing the shoplifter on her break and thus workers' comp isn't applicable.

EXPLANATION

A decision by the Ontario Workplace Safety and Insurance Appeals Tribunal inspired this hypothetical. In that case, the Tribunal ruled that a store clerk who violated the store's workplace violence policy in pursuing a shoplifter while on her break wasn't acting in the course of her employment. The Tribunal considered whether:

- The employer benefited from the worker's activity;
- That activity related to the worker's normal employment duties;
- The employer asked or instructed the worker to engage in the activity;
- There was a personal element to the activity or it was risky;
- The employer controlled the location where the activity occurred;
- The injury occurred during work hours; and
- The worker's activity contributed to the circumstances of the injury.

The Tribunal noted that although 'brief personal activity may

be reasonably incidental to employment,' the clerk here 'deviated substantially from her employment routine' by moving to the public parking lot out of the employer's premises and control, and in violation of the employer's policy. Finally, the employer also didn't benefit from the activity. Thus, the Tribunal concluded her injuries didn't arise out of the course of employment and weren't compensable. So her lawsuit against the employer and manager could proceed.

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because not every injury occurring during work hours is compensable. For example, [engaging in horseplay](#) or conducting [personal errands](#) during work hours can take workers out of the course of their employment duties and render their injuries not compensable under workers' comp. And injuries suffered over lunch or while the worker's on a break may not be covered either. Here, although the clerk was on duty, she was taking a smoke break when she was hurt, which is just one of several factors that weigh against coverage by workers' comp.

Insider Says: For more information about compensability of injuries, go to the [Workers' Compensation Compliance Centre](#).

B is wrong because the injury didn't actually occur on the store's premises. The incident occurred in a public parking lot that wasn't under the store's control—it was the landlord's property. So it wasn't part of the workplace. Note, however, this fact alone wouldn't absolutely bar compensation. If workers are injured on another employer's premises while acting within the scope of their employment, those injuries may be compensable. Workers injured [at home](#) or even [on the way to a worksite](#) may also suffer compensable injuries. But in this case, the clerk's conduct and when it occurred, as well as the location in which it occurred, took her out of the course of her employment.

D is wrong because the fact that the conduct that gave rise to the incident was a crime is irrelevant to whether the injuries are covered by worker's comp. Third parties can commit a crime in an employer's workplace that causes compensable injuries to a worker. In fact, retail workers are especially vulnerable to workplace violence on the job at the hands of outsiders. So if the store clerk was, say, stocking shelves when the man knocked her down, grabbed items and ran out of the store, her injuries from the assault would be compensable.

SHOW YOUR LAWYER

[Decision No. 272/13](#), 2014 ONWSIAT 2526 (CanLII), Nov. 21, 2014