Who’s Responsible for Injury Caused by Workers From Multiple Employers?



SITUATION

A worker and a forklift operator are each employed by different employers but work in the same warehouse. After discussing the storage of materials in the warehouse, the operator starts his forklift and the worker begins walking away, behind the forklift. The operator, following safety procedure, checks his mirrors and over his shoulder before backing up. And, while moving in reverse, the forklift sounds a back-up alarm. The operator doesn’t see that the worker has stopped walking and is now standing behind the forklift. Engrossed in paperwork on a clipboard, the worker ignores the alarm and the forklift runs over his foot. He suffers permanent injury requiring several surgeries.

QUESTION

Who’s responsible for the workers’ comp costs related to the injury’

A. Only the employer of the injured worker, because employers are only responsible for injuries to their own employees.

B. The forklift operator’s employer, because the operator caused the injury.

C. Both the worker’s and the operator’s employers, because both employees were at fault.

D. Neither employer, because the worker and forklift operator were both negligent.

ANSWER

C. When two or more employers’ workers are the cause of an injury, both employers can be held responsible for the cost of the injury.

EXPLANATION

This hypothetical is based on an Alberta Workers’ Compensation Appeals Commission decision that upheld the allocation of the workers’ comp costs related to a worker’s injury of 25% to his employer and 75% to a forklift operator’s employer (the operator ran over the worker’s foot). The Commission explained that when two or more employers’ workers are the cause of an injury, both employers can be held responsible for the injury’s costs in proportion to the workers’ negligence. Here, because a pedestrian’in this case, the worker’has the right of way, the operator therefore was more negligent, said the Commission. True, the worker shouldn’t have stopped walking behind the forklift and should’ve been paying attention at all times in the warehouse. He also should’ve heeded the forklift’s back-up alarm. However, the operator had the duty to properly inspect the path his equipment would take before backing it up. So although the worker was irresponsible, the operator owed a duty set out in the OHS law to reasonably protect other workers and had a greater responsibility for the resulting injury because of the risks inherent in operating machinery such as forklifts. As a result, allocating 75% of the injured worker’s costs to the operator’s employer was appropriate, concluded the Commission.

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because employers may be responsible for the costs of injuries suffered by someone else's employee under certain circumstances. When the workers of more than one employer are involved in an incident that caused an injury, the test for responsibility is which employer's worker(s) contributed to causing the injury. Here, *both* individuals were negligent. The worker was negligent in failing to heed the back-up alarms and in stopping behind moving mobile equipment; the forklift operator was also negligent for failing to ensure the path was completely clear. So both their employers would be responsible for the costs, not just the injured worker's employer.

B is wrong because the operator wasn't solely responsible for causing the injury. Although the operator's forklift physically caused the injury to the worker's foot, the worker also shares some blame for the incident for failing to heed the back-up alarms, not paying attention and stopping behind the forklift. As we've said, workers' comp rules allocate responsibility when an injury is caused by conduct of workers from multiple employers. Because both workers here were negligent, both employers bear responsibility for the costs of the injury, although not in equal proportion.

D is wrong because a worker's negligent conduct doesn't bar coverage of an injury caused by that negligence. Injuries won't be compensable if the injured worker engaged in wilful misconduct. What's the difference between simple negligence and wilful misconduct' If a worker is well aware of a safety rule'such as using a guard on machinery'and intentionally, knowingly and repeatedly violates the rule even after being warned his conduct is in violation, such conduct could be deemed wilful and thus bar workers' comp coverage for any resulting injuries. In this case, the worker was negligent in standing behind moving machinery and not heeding an alarm. But he was distracted by his paperwork. He didn't act in deliberate defiance of a safety rule or otherwise engage in insubordinate behavior. Similarly, the operator was careless

when backing up his forklift but he didn’t knowingly or intentionally run over the worker’s foot. So their misconduct isn’t likely to be deemed wilful.

***Insider* Says**: For more information about how workers’ comp claims are handled, visit the Workers’ Compensation Compliance Centre.

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