

# Workers' Comp Covers Injury Suffered During Sex?



Worker's comp is intended to provide coverage for workers who get hurt or sick on the job. Most workers' comp claims are for clearly work-related injuries, such as a back sprain suffered while lifting material, a laceration from a piece of equipment or a broken ankle suffered in a trip-and-fall.

But some workers file claims for injuries suffered under more unusual circumstances. A recent case from Australia is a perfect example.

A woman who worked for the Australian government was sent on an overnight business trip to New South Wales. She stayed in a hotel chosen by her employer at its expense.

The worker met a friend on the trip. While they were having sex in her hotel room, a light fixture on the wall above the bed fell off and hit the woman in the face, injuring her nose and mouth. She filed a workers' comp claim for her physical injuries and depression caused by the incident, claiming she was entitled to compensation because she was at the hotel on business and was hurt while in the course of employment.

Comcare, the Australian government's workplace safety organization, rejected the claim, finding that her activity at the time she was injured wasn't work-related. Its Appeals Tribunal upheld the decision, ruling that sex wasn't an 'ordinary incident of an overnight stay' that could be expected on a business trip.

But the worker appealed and the Federal Court ruled in her favour.

The court found that the activity she was doing when she was hurt didn't have to be encouraged or implied by the employer to be work-related. Without any specific misconduct, her presence in the hotel room when she was injured was enough to warrant compensation, said the court.

"If the (employee) had been injured while playing a game of cards in her motel room she would be entitled to compensation even though it could not be said that her employer induced or encouraged her to engage in such an activity," said the court.

Comcare appealed and the full bench of the Federal Court upheld the ruling that the fact the worker was in the hotel room at her employer's instruction was enough to make her eligible for compensation.

We couldn't find an equivalent ruling in Canada. But here are some unusual situations in which Canadian workers filed workers' comp claims' can you tell which claims succeeded' Worker was injured:

- While drunk
- On a meal break
- While working out in the employer's gym
- While working from home
- After he quit
- In an assault by a co-worker
- While horsing around on the job.