



News Release

York Insurance Services Group discusses earthquakes and the compensability of workplace injuries resulting from natural disasters

PARSIPPANY, N.J. (December 30, 2009) – York Insurance Services Group, Inc., a premier provider of a full range of insurance services, including claims administration and managed care, today released a paper analyzing the compensability of workplace injuries resulting from earthquakes and other natural disasters.

Angela Hatley, vice president of client relations, found that proving compensability requires proof of exposure to a risk greater than that of the general public, for example a defective building. The paper, reproduced below, discusses determining whether employment was the proximate cause of injury, compensability of earthquake drill related injuries, and examples of injuries occurring during natural disasters.

About York Insurance Services Group

York Insurance Services Group, Inc., is a premier provider of claims-handling, specialized loss adjusting, managed care, pool administration, loss control and other risk management and insurance services nationwide. York provides risk management and managed care solutions to a wide variety of strategic partners, including insurance carriers, self insureds, brokers, wholesalers, MGAs, programs, risk pools and public entities. York delivers customized claims solutions for all lines of business, including property, liability, products liability, ocean and inland marine, environmental, transportation and logistics, construction and workers' compensation. York is based in Parsippany, N.J., and has nearly 1,200 employees nationwide. Visit us on the Web at www.yorkisg.com.

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EARTHQUAKE: Is an injury arising from an act of nature compensable? It depends!

Angela Hatley

Vice President of Client Relations

An act of nature is, in essence, a natural disaster such as flooding, landslides, lightning, freezing, tsunamis and earthquakes. These types of events are considered “force majeure,” or causes outside the parties’ control that could not be avoided by exercising due care. Generally, an injury arising from an act of nature is a non-compensable injury. If the employee can prove exposure to a risk greater than that of a member of the general public, however, the injury may be found to be compensable.

As an example, if a large earthquake caused buildings in the area to topple and ceilings to collapse, an employee at a school district might be injured. Some employees might suffer heart attacks or post-traumatic stress. These types of injuries would not be proximately caused by employment. But if the school district building was the only building that collapsed during an earthquake, or it was found that the building was defective, the claim would be compensable.

Because of the intervention of a human agency (the defective building) placing the employee in harm’s way, a special risk or danger was created that may not have occurred if the employee was in a different location. This could mean the employment was the proximate cause of injury.

According to Gwen Hampton’s “Workers’ Compensation Benefits Manual,” “If no special aspect of the employment was involved, the naturally occurring disaster would appear to be the proximate cause of injuries sustained at the worksite, as well as those sustained by the general public.”

A related question has been posed about injury during an earthquake drill. An employee’s participation in a safety drill arises from employment and occurs in the course of employment. The employee is under the control and direction of the employer, rendering a benefit to the employer. An injury suffered during a drill would be a compensable injury. If an employee were acting up, joking around or horseplaying during a drill and then injured him- or herself, however, there is a defense to such an injury under the law.

Following are several examples of injuries occurring during natural disasters. An employee was killed during an earthquake when a roof collapsed on the employee. It was determined that the building was fit and safe, and the death was not compensable.

An employee was thrown from the top bunk of a bunk bed during an earthquake. The claim was found compensable because the bunk bed was not anchored to keep it from moving.

An employer required an employee to lower a flag from a metal flagpole during a lightning storm. Employment was found to be the proximate cause of injury, even though the cause was an act of nature, because the employee was placed in a greater position of danger. Had the employee lowered the flag during the storm *contrary to* the employer's directive, however, the injury is not likely to have been found compensable.

The rule of thumb from the "California Workers' Compensation Claims and Benefits Volume One, Eleventh Edition":

"If the employment subjects the employee to an increased risk compared to that of the general public in the vicinity, the injury is compensable. If the cause of injury is an intervening human agency or instrumentality of the employment, the injury is compensable."

The content of this memorandum does not constitute legal advice and was not prepared by an attorney.