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An Employer's Guide to Proving Intoxication

Having a drink after work is common, but what happens when intoxication enters the work environment? This question may need to be explored in some workers' compensation cases.

Though not limited to alcohol, intoxication occurs when a person's ability to function (both mental and physical) is impaired due to the consumption of alcohol or drugs (including legal and illegal). If an intoxicated employee becomes injured, he or she may still be covered by work comp. According to the [Guide to Indiana Workers' Compensation](#), employers must prove the injuries were due to the intoxication itself. This defense is one of the six employers may utilize in denying work comp benefits. Additionally, in order for an employer to use this defense, the issue must be raised in a legal plead called a special answer. The special answer plead must be filed at least 45 days prior to the hearing. Failure to file the special answer will waive the defense. The two examples below (provided by the Guide to Indiana Workers Compensation) may help to clarify when this defense is appropriate.

EXAMPLE A:

An employee arrives at a job, which involves driving a delivery truck. The employee has just consumed a large quantity of alcohol and realizes that he is very drunk. While making deliveries, the employee blacks out and his truck runs off the road. Several tests revealed that the employee's blood alcohol content was well above the legal limit, and the employee admitted that his intoxication caused him to black out. The employee applies for worker's compensation benefits. Forty-five days before the hearing, the employer files a special answer arguing that no compensation is payable because the employee's injuries were due to his intoxication.

In this example, a good argument can be made that the law might bar the employee's compensation because the employee's intoxication almost certainly caused his injuries.

EXAMPLE B:

The same employee arrives at the same job after consuming a large quantity of alcohol. Before the employee can get into his truck, he is severely injured by merchandise that falls from warehouse shelves. The employer notices a strong smell of alcohol and the employee admits he was drunk at the time of the accident. In this example, the employer will be unable to use the employee's intoxication as a defense to a worker's compensation claim because the intoxication did not cause the employee to be injured by falling merchandise.

[Source: The Guide to Indiana Workers' Compensation](#)

In both examples, employers should document the situation properly or there is no defense. A positive drug or alcohol test alone might not provide a defense for a work comp case.

The following steps may help employers document proof.

- Talk to fellow workers and supervisors as soon as possible after a work injury, before memories fade. Have co-workers and supervisors sign written statements.
 - Had anyone smelled alcohol on the worker's breath?
 - Did the worker often go out for a meal break?
 - Was the worker behaving oddly prior to the injury?
- Obtain medical records quickly and look for alcohol or medication use. Remember, some medications are legally prescribed.
- Make alcohol and/or drug testing a required practice in injury cases
- Consult legal counsel if the employee fails a drug test or refuses to consent to a drug test.

Source: [DBL Law](#)

Handling an intoxication situation promptly and properly can save employers from paying unjustified work comp benefits. Many employers require an automatic drug screening when a workplace accident occurs. Employers need to remember that Ind. Code §22-3-2-8 requires the employer to pay worker's compensation *unless the employee's accident was caused by intoxication*. The drug screening may be positive, showing the presence of an intoxicant. Employers need to remember this may not demonstrate that an employee was intoxicated at the time of the accident or that the intoxication caused the injury. With this being stated, a positive drug test alone might not provide a defense to a worker's compensation claim. Should an injury occur at the place of work, employers are best to document all processes.

References

[*The Guide to Indiana Workers' Compensation*](#),

<http://www.union1.org/oip/PDF%20Files/PDF-%20Others/workers%20comp.pdf>

[*DBL Law, Alcohol, Drugs and Workers' Compensation*](#),

<http://www.dbllaw.com/2010/10/sir-have-you-been-drinking/>