LAW OFFICES
JOHNSON DUFFIE

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SIDEBAR

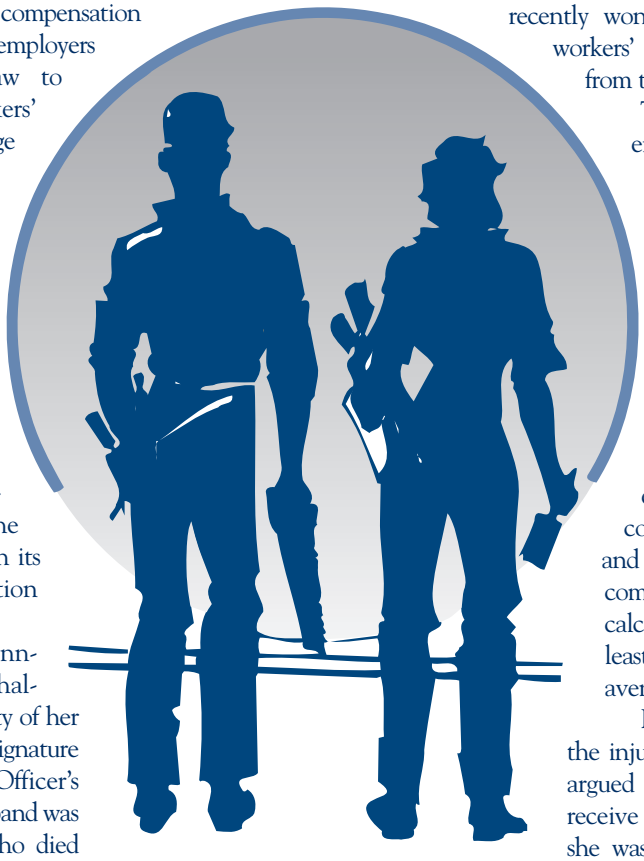
Workers' Compensation Update

Workers' Comp for Corporate Officers

If you are a corporate officer, either because you own an incorporated business or because you work for a corporation in which you have a share of ownership, you have the option to waive your right to workers' compensation benefits. While all employers are required by law to maintain workers' compensation coverage for all employees, corporate officers can sign an Executive Officer's Declaration waiving their rights to workers' compensation benefits. When an officer opts out of the workers' compensation coverage, the business saves costs on its workers' compensation insurance premiums.

Recently, a Pennsylvania widow challenged the authenticity of her deceased husband's signature on an Executive Officer's Declaration. The husband was a corporate officer who died from a heart attack after he suffered an accidental electrocution at work. The corporate employer and its insurance company denied the widow's workers' compensation death benefit claims, producing a Declaration that they claimed the husband had signed. Handwriting experts opined that the signature on the Declaration was in fact made by the husband. At hearing and on appeal, the employer and the insurance company won, and the widow was not able to collect any workers' compensation death benefits.

Corporate officers should carefully consider the consequences of opting out of workers' compensation benefits. Those who opt out of workers' compensation coverage lose all medical, wage, and death benefits otherwise legally available for work-related injuries. If you own your business and are considering opting out of coverage for yourself, make sure that you have adequate disability and death benefits from other insurance that cover work-related injuries. And if your corporate employer asks you to opt out of workers' compensation benefits, you should request employer-provided disability and death benefits.



Emergency Volunteers are Entitled to Workers' Compensation

A 62-year-old emergency medical technician (EMT), who broke her leg while volunteering for a borough volunteer ambulance corps, recently won her fight to receive workers' compensation benefits from the borough.

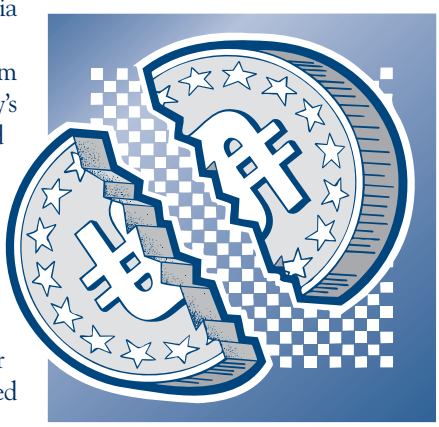
The Workers' Compensation Act provides that individuals injured while volunteering for volunteer fire departments, municipal ambulance corps, or other specified emergency and rescue agencies are considered to be employees and are entitled to workers' compensation medical and wage benefits. Their compensable wages must be calculated at an amount at least equal to the statewide average weekly wage.

In the case involving the injured EMT, the borough argued that she should not receive any benefits because she was retired and receiving Social Security benefits, and she had lost no actual income as a result of her injuries. However, the EMT claimed that, while she was not actively employed, she was still entitled to benefits awarded to volunteers under the terms of the Act, calculated according to the statewide average weekly wage.

The Pennsylvania Supreme Court upheld the wage award, finding that the legislature, as a matter of public policy, meant to compensate volunteer emergency workers for injuries that they suffer while performing their duties. To do so, the legislature identifies specified emergency volunteers as "employees" for the purpose of determining workers' compensation benefits. The court announced that "it is clearly in the public interest to provide a financial safeguard to the good citizens willing to volunteer their time and effort at some risk if they should suffer an unfortunate injury while in the public service."

Employee Benefits and Child Support

Pennsylvania has a complex body of law that requires that separated parents pay child support. The laws involved include statutes passed by the Pennsylvania legislature, rules established by the Pennsylvania Supreme Court, and a set of economic guidelines written and regularly revised by a committee appointed to the task by the Pennsylvania Supreme Court.



A parent's income is usually calculated from at least a six-month average of the party's income. Bonuses and overtime are included if they regularly recur. All of a parent's financial resources, including potential earning capacity, income, and property, must be considered in fixing a support obligation. Wages, gifts, inheritances, lottery winnings, second jobs, undistributed profit in a parent's business, and all other sources of income or assets may be considered in the analysis.

"Perks" of employment such as automobile expenses, travel, entertainment, transportation, and insurance benefits can be "added back" into a party's income for purposes of establishing a support order. Likewise, some retirement contributions are considered to be income available for child support. For example, employee contributions to most 401(k) plans are added back into the total income attributed to the employee-parent.

Because most 401(k) contributions are discretionary and the employee can borrow against the plan, the contributions are considered income. However, mandatory contributions to pensions or retirement plans are not included in income calculations in child support cases. Vested stock options generally are reportable on W 2's when exercised and constitute income for support purposes.

Generally, the value of employer-paid health insurance does not constitute additional income. Less clear is how to treat "flex credits," given as health insurance benefits by some employers. With flex credits, employers pay employees a monthly benefit that each employee can then "spend" on an array of benefits, including medical, dental, eye care, disability, and/or life insurance. In a case involving a mother who received flex credits from her employer for health insurance, the Pennsylvania court held that the money that the mother received for flex credits should not be considered income, even though it was reported with her gross pay on her paystubs. Instead, the court ruled that only the net amount remaining to a parent after the parent spends flex credits should be treated as income available for support.

If a parent spends more than the flex credit granted by his or her employer for benefits, the additional benefits costs normally should be apportioned between the parties to the extent that the children enjoy the benefits.

The employee's cost of health insurance premiums for the children and spouse is typically allocated between the parties based on pro-rated net income calculation. Daycare expenses are also allocated.

Prostate Cancer Misdiagnosis

Prostate cancer is now the number one cancer diagnosis for American men and is the second most frequent cancer killer of those men—second only to lung cancer. It is so prevalent that, as of 2007, one American man in six develops prostate cancer during his lifetime. When prostate cancer is detected early, it is almost 100% treatable.

While not a common occurrence, prostate cancer can and does spread to other parts of the body, particularly if it is not diagnosed promptly and treated properly. Recently, a Pennsylvania widow successfully sued her deceased husband's primary physician for the pain and suffering that the husband experienced due to improper treatment for prostate cancer.

The husband was a 74-year-old retired mill worker who, with his wife, was enjoying a very active retired life. On a regular physical checkup, his blood testing showed an elevated "PSA," which is an indicator of possible prostate cancer. His physician followed a proper course of conservative treatment for the first year of his diagnosis.

The treatment included biopsies and MRI and bone scans to detect whether the cancer had spread. One of the radiologists who read the bone scans expressed concern that certain bone abnormalities in the husband's jaw could be a sign that the prostate cancer had spread. The physician discounted this opinion, did not disclose it to the patient, and did nothing to address it.

The husband then started to experience regular pain in his jaw and sought treatment over a period of almost three years from various dentists and dental surgeons. He underwent several root canals, a tooth extraction, and at least one emergency room visit due to dental pain. At no time during this course of dental treatment and escalating pain did his physician change his opinion on the abnormal bone scan report from the radiologist.

The widow won her suit against the physician and was awarded more than $700,000 in damages. While the experts agreed that the husband's prostate cancer was incurable and that his life expectancy was short, the widow's claims focused on her deceased husband's years of pain and suffering associated with the dental treatment for the undiagnosed bone cancer in his jaw.

Regular PSA testing and appropriate follow up are essential to the prompt and effective diagnosis of prostate cancer. If you or someone you love is in treatment for prostate cancer, be sure to be attentive to other health issues that may seem unrelated.

Parents Cannot Sue Catholic School

When their seventh-grade son was expelled from a Catholic elementary school, a Pennsylvania couple sued the Philadelphia Archdiocese and the school, as well as the priest and religious sister who ran the school. The expelled student and his classmates had planned a "rumble," apparently inspired by an assigned book that chronicled a fictional account of gang violence.

On the day of the rumble, the school administrators received multiple telephone calls from concerned parents and disclosures from students. The information shared led to the derailment of the rumble and the expulsion of the student. The student was seen with a penknife by other students. However, when confronted by the priest and the sister, he produced only a nail file, letter opener, and scissors. The parents claimed that there was no conclusive evidence that their son had a penknife at any time.

The priest and the sister spoke to a number of students and parents about the incident. In addition, the school sent a letter home to all parents after the incident. While the letter did not name the expelled student, it did disclose that a student had been expelled for bringing a knife to school.

The parents sued for defamation, emotional distress, and breach of contract, insisting that their son had not brought a penknife to school. Their case was dismissed on a fundamental constitutional principle known as the "deference rule." The deference rule provides that courts may not review or decide matters of "ecclesiastical discipline, faith, rule, custom or law" of a religious body that are based on religious principles.

The parents claimed that, when the priest and the sister spoke to other students and parents about the incident, they were not engaging in ecclesiastical activities but were simply spreading a false rumor about their son. The Pennsylvania Superior Court disagreed.

The court observed that it would lead to "total subversion of such religious bodies" if members could sue in court when unhappy with the decisions of their church. Where church members have purely legal disputes over property, the courts will provide a forum for litigation. But the courts consistently defer to religious decisions of religious associations. In the case involving the boy with the penknife, the Pennsylvania Superior Court ruled that the operation of a church school is so intertwined with church doctrine that it is impossible to separate the legal from the ecclesiastical decisions, stating that "intrusion into the bishop's decision on matters concerning parochial school discipline and expulsion places this court perilously close to trespassing on sacred ground."

The decision applies equally to any religious school. Parents who send their children to religious schools have no legal rights to litigate expulsion. Of course, if any school's treatment of a child crosses the line into criminal conduct, the particular individual who acted criminally can be arrested and prosecuted. But short of criminal conduct, religious schools have complete control of their systems of discipline and the final word on expulsion.

Motel and Fraternity Liable for Assault

A young woman who was sexually assaulted by a guest at a fraternity party successfully sued the fraternity, as well as the motel where the party was held.

The fraternity rented two motel rooms to hold a party, which extended over a 24-hour period. The fraternity served alcoholic beverages at the party despite the fact that most of the guests were underage. The motel owner was not on the premises during the party and had no employees on duty. Police were called to the motel to quell the noise during the late evening hours, at which point they confiscated alcohol and removed two intoxicated guests but did not order the fraternity to stop the party.

The young woman who sued claimed that she was not intoxicated but acknowledged that she had "passed out" on a bed in an unoccupied room during the party. She awoke in the course of being sexually assaulted by another guest who was a stranger to her. She left the party and reported the assault. The assailant was arrested and later pleaded guilty to various sexual assault charges. The victim sued the fraternity and the motel, and the jury awarded the young woman over $500,000 in damages.

Generally, no one is legally responsible for the criminal conduct of third parties. However, where a person or an entity owes the victim some special duty of care, liability for the criminal conduct of others may exist. The Pennsylvania Superior Court upheld the award on appeal, noting that hotel and motel owners owe a particular duty of care to their guests. Because the motel owner knew that the fraternity was holding a party, he had the duty to have some supervisory personnel on the premises. Similar liability has been extended to landlords who know of dangerous criminal conditions, to drive-in movie businesses, and to hotel and security companies.

Thank You!

Thank you for choosing Johnson Duffie for your legal needs. We hope that you will continue to count on us when you need legal help. We are just a phone call away.

We also appreciate the trust that you have placed in our firm by referring your friends, family, and associates to us for legal services. Thanks!

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301 Market Street, P.O. Box 109
Lemoyne, PA 17043-0109
717-761-4540 • www.jdsw.com

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Dickinson Law Student Interns at Johnson Duffie


Christina Bonne-Annee

Johnson Duffie is pleased to welcome its newest summer intern Christina Bonne-Annee. Christina is participating in the Capitol Area Managing Partners Diversity Initiative, a program started by the Dauphin County Bar Association in 2004. CAMP, as the program is called, is dedicated to increasing the number of minority lawyers practicing in the Central Pennsylvania area.

Christina, currently a student at Dickinson School of Law in Carlisle, grew up in New York City and completed her undergraduate studies at NYU majoring in History and French. Christina then took some time off, entering the workforce as a paralegal. When she decided to go to law school, Christina was looking for something a little bit different and decided on DSL because of the smaller environment and the warm feeling she got from the faculty and students.

Christina completed her first year at DSL in May. She decided to enter the CAMP program rather than take a traditional clerkship because, "I believe in what the program stands for in terms of diversifying this area and the legal profession." As part of her experience, Christina has been shadowing all of the attorneys at Johnson Duffie and has had the opportunity to observe hearings, depositions and even a Superior Court argument. "I was just taking it all in," Christina said of the Superior Court argument.

As for the future, Christina will return to DSL in the fall to start her second year of law school. Her hope for her future career is simple. "I hope to have a positive impact wherever I end up," Christina said. "As an attorney, you can really have an impact on your clients and your surroundings, and that is exciting to me."

New Arrival

After much anticipation, the newest member of the Johnson Duffie family, Gavin Frank Bonanno has arrived. Gavin, the son of Associate Attorney Kelly Bonanno and her husband Matt, was born on April 11, 2008 at 4:05 am, weighing 8 lbs 4 ozs and measuring 20 1/4 inches.


Gavin Bonanno