

EMPLOYER LIABILITY

THE OVER-TIRED EMPLOYEE FOLLOWING EXTENDED WORKING HOURS

Employers who require or request an employee to work long hours or under unusually difficult conditions which can lead to the employee becoming fatigued or exhausted may find they are liable in the event the employee suffers an illness or injury, even if the illness or injury occurs outside the actual working hours, such as during the employee's trip home following the extended shift.

- ___ If there is a nexus between the fatigue produced by the work and the illness or injury, the employer's liability is akin, in legal theory at least, to the liability of the bartender in dram-shop liability cases.
- ___ Accidents which are especially prone to producing the "exhausted-worker liability" are the driving accidents following extended-shift working hours, double-shift situations, or "short-change" schedule situations. The likelihood of blame upon the employer increases if the working conditions are unusually harsh or if the employee complains of being ill or tired or if the employee objects to the extended hours and is required to work under mandatory overtime policies or procedures.
- ___ The liability is likely to arise in such accident cases, even though the employer's policies are lawful and even though the employer's representatives are acting within the law and within company policy guidelines.
- ___ The cause for action is generally that the employer was negligent in either forcing the employee to work under unreasonable conditions or in allowing the employee to leave without proper "safe-ride" assistance. The cases which have been decided or settled unfavorably toward employers, for the most part, have been in situations where the employer establishes the schedules or working hours of the individuals involved.
- ___ While the damages due the employee in "tired-worker" or "exhausted-worker" cases may be limited to worker's compensation remedies, the liability for third-party situations may extend into the tort and negligence regions.

CONSIDERATIONS WHICH MAY LIMIT EMPLOYER LIABILITY IN "TIRED-WORKER" OR "EXHAUSTED-WORKER" CASES INCLUDE:

- ___ Consider providing a ride home for the individual or providing the employee with the opportunity to call a family member to come to the work location to pick up the employee (as is done according to MARC Checklist for Fitness-For-Duty/Illness Incidents).
- ___ Ask the employee if he/she feels capable of safely driving home. If he/she does not, then follow the item directly above.
- ___ If the employee arrives at work tired, the supervisor should consider, based upon supervisory sensory fact observations, whether or not the employee is fit for duty.
- ___ If an employee is about to leave work in an emotionally upset or irate condition following a workplace confrontation, the supervisor should consider offering the employee an opportunity to "cool-off" or to attempt to resolve the problem, on company time (unless policy prohibits) before the employee leaves the premises.
- ___ If the supervisor ultimately believes the worker is fit to continue to work (or in the case of leaving work) the supervisor may want to ask the employee: "Are there any problems which may prevent you from continuing on your job (from safely driving home)?"
- ___ Supervisors should insist as a condition of employment that all employees who arrive to work late should report to their supervisor before being allowed to begin working. Such a requirement would allow the supervisor to personally observe an employee who may be arriving in a condition unfit to work, for any reason.
- ___ In making decisions in cases or situations as described above, the supervisor should involve another supervisor as witness and as a second source of observation and judgment.