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Chapter 7

Employers' Immunity Under Workers' Compensation Statutes: Deal or No Deal?

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Synopsis

§ 7.01. Introduction.

The sharp rise of industrial injuries in the United States at the turn of the 19th century resulted in the adoption of workers' compensation statutes by every state. These now-familiar statutes allow employees to recover for on-the-job injuries regardless of fault—at the expense of employers. In exchange, employers are immune from suit and compensation benefits are the exclusive remedy for employees.

In the past 110 years of workers' compensation law, the vast majority rule has been that employers enjoy immunity from suit unless the employer intentionally injures the employee. This majority rule considers "intentional" as actual subjective intent to cause harm, *i.e.*, an "intentional tort" such as assault or battery.

However, in the past 30 years, there has been increasing receptiveness to broadening the definition of "intentional" to accommodate a wide variety of scenarios where the facts suggest an employer's acts are "just south" of intentional and, despite protestations to the contrary, more akin to gross negligence. Increased public scrutiny on modern industrial accidents, combined with a business culture already inundated with regulatory agencies and safety rules, creates a modern climate ripe for the continued erosion of employer immunity. This fact is evidenced by states like South Carolina, which this past year introduced legislation whittling away at employer immunity.[1]

Evaluating the actual strength of one's employer immunity in a given jurisdiction is an important consideration before commencing or continuing in any operations. Like high stakes poker games, there are many rule variations to the employer immunity "game" from state to state. As with any game, employers must know these rules, including the subtle nuances, to succeed. This chapter is intended to provide guidance in evaluating just how "immune" an employer is, examine modern trends in employee suits for workplace injuries, and also discuss methods to increase an employer's chances of success in jurisdictions that tend to encourage employee suits.

§ 7.02. The Advent of Workers' Compensation Statutes.

[1] — History.

The origins of workers' compensation statutes in the United States stem from increasing industrial injuries in the late 19th century.[2] At that time, the common law duties of employers and the common law defenses to employers

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1 S.B. 390 and 386 proposed to create an exception to the exclusivity provision "for a willful, intentional, or reckless injury resulting from the violation of a statute or regulation . . . the intentional removal of a safety device or warning label . . ." Neither bill passed. Note also that Maine, a state that has for a long time not recognized any exceptions to immunity, introduced bills that, if passed, would have created significant "intentional" exceptions to employer immunity.

2 Lex K. Larson & Arthur K. Larson, *Workers Compensation Law: Cases, Materials and Text* § 2:03 (3d ed. 2000).