



## **WORKERS' COMPENSATION ISSUES In The Event of a Natural Disaster**

### **How can my company avoid being sued for workplace injuries incurred as the result of dealing with a natural disaster?**

As with any situation, use reasonable care in making and supervising any job assignments where employees are going to be exposed to extremely unpleasant or potentially dangerous or shocking circumstances, and situations that extend outside the bounds of their customary job duties.

Here are some things to keep in mind:

- Plan work carefully to protect your employees from any physical danger or psychologically shocking circumstances which you can possibly anticipate in the course of their duties.
- Ensure that employees who do perform such duties **have and use** protective clothing and equipment necessary for their safety as well as the safety of others around them.
- Be thoughtful and intentional in assigning and supervising duties. The more [“careless”, “reckless”, or “assigned without intentional thought”], your actions appear to be in allocating or supervising such work, the more likely it is that a court will allow an employee to sue for damages, rather than be limited to workers’ compensation recovery.
- Remember that regardless of whether the employee “volunteers” for or is “assigned” the task, any injury incurred during the course of the process falls under the protections and obligations of worker’s compensation.

### **If my employees have injuries from exposure to dangerous substances and the trauma of dealing with a natural disaster aftermath at work, will they be able to sue the company for damages in court?**

Generally, under state law, your employees will be limited to workers’ compensation remedies if they are injured as a result of an accident occurring in the course and scope of their job duties.

If their injuries result from deliberate or intentional (rather than accidental) conduct, they may have the right to sue you in court for all of their actual losses (compensatory damages), including mental distress damages and punitive damages.

Beyond this, there are significant differences in the laws of the states that are affected by natural disasters such as hurricanes.

**Georgia:** Employees are limited to damages available under the state workers’ compensation law, and they cannot sue their employer outside of that system for punitive or other damages.

**North Carolina:** The only exception to the exclusivity provision of the North Carolina Workers’ Compensation Act is an exception for intentional misconduct by an employer,

which is a narrow exception and is ultimately tantamount to an intentional tort and has only been applied in the most egregious cases.

**South Carolina:** An employer may be held liable for some intentional action on the part of the employer. One may bypass the workers' compensation system and sue their employer in court for a full range of damages, including punitive damages, pain and suffering, and mental anguish only under certain limited circumstances.

**Should I ask for volunteers when assigning unpleasant or potentially dangerous duties?**

Yes, but volunteering to assist doesn't change the employer's responsibility around wages or liabilities.

It is always better (but not always possible) to have someone volunteer for duties that extend beyond their reasonable and customary responsibilities, particularly in situations where such duties are unpleasant or present dangers the employee isn't accustomed to. Ensure proper and thorough training is provided. Warn volunteers in detail about any dangerous or unpleasant circumstances they may encounter, and take no unnecessary risks. Seek advice in advance from counsel around liabilities which may result from an employee's decision to participate, and look at outside resources for duties that extend beyond what the business or any employee is reasonably capable of safely performing.