

# Workers' comp exclusive remedy for AZ-based claims absent intent to inflict injury

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*The Arizona Workers' Compensation Act (AWCA) requires employers to provide workers' comp coverage to all full- and part-time workers. It's the primary exclusive remedy for covered employees who sustain workplace injuries. An employee may elect to reject workers' comp coverage, but only if she submits a written rejection of coverage to her employer before a compensable injury occurs. She is generally limited to the remedies provided under the Act after suffering a compensable injury. In fact, courts are generally deprived of subject matter jurisdiction over claims for injuries she may seek to assert against her employer. What must a covered employee allege in her claim to circumvent the "exclusive remedy" provision under the Act? The burden on the employee is extremely high.*

## **Background**

A flight attendant of an airline flying out of Arizona complained to her employer that the pilots with whom she flew on reoccurring flights were surreptitiously watching and recording her and everyone who used the forward lavatory through a hidden camera. According to her, the airline failed to properly investigate her complaint or remedy the pilots' alleged misconduct.

The flight attendant sued the airline, citing several state and federal law claims. The airline sought dismissal of her claims, arguing the state law claims were precluded by the exclusivity provision of the AWCA.

## **Willful misconduct threshold not met**

In reviewing the airline's request to dismiss the flight attendant's claims, the federal district court

for the District of Arizona noted that "proving the statutory exception to the exclusivity provision of [the Act] is a daunting task." A covered employee must be able to demonstrate "willful misconduct," which is more than just gross negligence or wantonness amounting to gross negligence. Arizona courts have defined four elements that must be present to proceed on a willful misconduct claim under the Act:

- The employer must have been the cause of the employee's injury.
- The willful misconduct must have been an act done knowingly and purposefully with the direct object of injuring another.
- The injury-causing act must have been a personal act of the employer.
- The injury-causing act must have reflected a willful disregard of the life, limb, or bodily safety of the injured employee.

In noting the herculean hurdle this standard presents, the court reflected on the dismissal of the case brought by the mother of a firefighter who died fighting the Yarnell Hill Fire. In that case, the court found the actions of two supervisors resulting in the death of 19 Granite Mountain Hotshot crew members weren't done knowingly and purposefully with the direct object of injuring the firefighters.

Similarly, in this case, the court found the flight attendant's allegations were insufficient to meet the willful misconduct exception.

## **No physical injury suffered**

The flight attendant alleged since she did *not* suffer a physical injury during an accident at work, her claims were outside of the scope of the workers' comp laws. The court disagreed, noting the alleged "stress and mental anguish" she suffered fell within

the “category of the unexpected, unusual, and extraordinary” stress covered by the Act.

Accordingly, the court agreed with the airline and dismissed the state law claims on the grounds they fell within the purview of the Act and she failed to establish the willful misconduct threshold to meet the statutory exception to the exclusivity provision of the Act.

### ***Takeaway***

Although the exclusivity provision of the Act provides you with solid protection against claims by covered employees for workplace injuries, other federal claims may be pursued if the alleged misconduct fits within one of the many federal employment laws (e.g., Title VII of the Civil Rights Act of 1964), as occurred in this case. You should have comprehensive policies against harassment, discrimination, and retaliation. Be prepared to investigate complaints by employees, such as those raised by the flight attendant. Serious complaints call for a thoughtful investigation and response.

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