# Under the Influence of the Intoxication Defense: Differing State Law Can Affect Workers' Compensation Claims for Workplace Injuries

*CLM Magazine*
April 2023
By William J. Murphy, Esquire

According to the U.S. Department of Labor, the use of drugs or alcohol at work significantly increases the the risk of workplace accidents. With this in mind, sooner or later every major employer will inevitably need to address a workers' compensation claim involving intoxication.

All states have some defense available to employers when an injured employee is found to be under the influence of drugs or alcohol at the time of an alleged incident or accident. Most states recognize a separate defense for intoxication. However, for a minority of states, there is no distinct defense for intoxication, but employers can rely upon the broader defenses of either 1) the injuries were caused by the employee's willful or intentional misconduct; or 2) the employee's voluntary intoxication took them out of the course of their employment rendering the accident not compensable.

The mere fact of an employee's intoxication alone is not an automatic bar to compensability. While every state requires that the intoxication be shown to have caused the accident, the degree of causation varies by state and generally falls into either contributing/proximate cause or sole cause.

The majority of states require that the employee's intoxication be shown to be a *proximate cause* or *contributing cause* of the accident. Under these standards, it is not enough that the injured employee was intoxicated at the time of the accident – it must be shown that the intoxication played a significant role in the accident.

In contrast to this, a minority of states hold the requirement that the employee's intoxication be shown to be the *sole* cause of the accident, including the state where I live and practice – New Jersey. This is the most stringent requirement – as evidence of any other cause, no matter how minor, will defeat the defense. For many jurisdictions that still hold to it, the "sole cause" requirement has practically nullified the intoxication defense. For example, there has only been one published opinion in New Jersey in 50 years where an employer successfully obtained a dismissal of a claim for intoxication. Over the years, a number of states have shifted from the "sole cause" requirement to the proximate or contributing cause defense, but a minority maintain it.

Assuming that an employer successfully demonstrates an accident was caused by intoxication (by whatever standards their jurisdiction requires), what happens to the claim? For the majority of states, the intoxication defense is a complete bar to the claim. If the employer prevails in asserting this defense, the claim will be dismissed. However, some states will only

reduce benefits for intoxication, not dismiss the claim entirely. For example, in Colorado, if the employer is able to demonstrate intoxication, the injured employee's non-medical benefits will be reduced by 50%. New Mexico has formed a hybrid of these two approaches – dismissing claims wholly if intoxication is shown to be the sole cause and applying a 10% reduction in benefits if it is merely a contributing cause.

In many jurisdictions, an employer can avail themselves of a rebuttable presumption that the intoxication caused the accident if there is a certain amount of alcohol and/or drugs in the employee's system at the time of the accident. If this occurs, it is then the employee's burden to prove that their intoxication was not the cause of the accident. If the employee fails to meet this burden, the employer then prevails on their intoxication defense. For jurisdictions such as Indiana, an employee's refusal to take an alcohol or drug test will also trigger this rebuttable presumption.

It is imperative that employers familiarize themselves with their state's laws and confer with counsel regarding these rebuttable presumptions. Many states have strict requirements regarding the type of blood or alcohol test that is done, how long after the accident it is performed, etc. If the testing reveals a high alcohol/drug presence in the employee's system, but the employer did not comply with state requirements in performing the test or preserving the results, the court may not recognize a rebuttable presumption in their favor.

Additionally, there are other nuances which should be considered in raising this defense. Courts will sometimes decline to consider the intoxication defense if the intoxication itself is deemed work-related. For example, in an Iowa case, the court held that the employee – an exotic dancer who was expected to drink with customers as part of her job duties – had become intoxicated in the course of her employment. As a result, the court would not consider intoxication as a defense in the same way it would if the intoxication had resulted from something unrelated to her employment. *2800 Corp. v. Fernandez.*

Lastly, some jurisdictions take into account an employer's knowledge of their employee's drug or alcohol use. For example, in Montana, if an employer is aware of the employee's use of drugs or alcohol and has not taken affirmative steps to stop them, the court will not consider an intoxication defense.

Each employer should take the time to make themselves aware of their state's laws and approach to the intoxication defense and discuss with counsel. This way, in the event that a workplace accident involving intoxication occurs, they will be in the best position to assert the defense against any claim which may be filed.

*William J. Murphy is an attorney in the Roseland, New Jersey office of CLM member firm, Marshall Dennehey, where he defends clients in workers' compensation matters. He may be reached at wjmurphy@mdwcg.com.*

This article published in the April 2023 issue of *CLM Magazine*, the publication of the Claims and Litigation Management Alliance. All rights reserved. Further duplication with prior permission is prohibited.