

# Trovillion, Inveiss & Demakis

Trovillion, Inveiss & Demakis, APC has grown in reputation as one of Southern California's premier law firms specializing in representation of employers, insurance carriers and third party administrators in workers' compensation litigation.

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## Employer Liability Outside the Workers' Compensation Exclusive Remedy

Labor Code §§ 3601 and 3602 state that worker's compensation is typically the exclusive remedy for an employee's injury or death arising out of the course and scope of employment. There are certain exceptions that can open up the employer to additional liability and allow the employee to pursue a civil claim.

First, an employee can pursue a civil claim against their employer if the injury is proximately caused by a willful physical assault by the employer. (Labor Code § 3602(b)(1)) Furthermore, if an employer ratifies the assault of the employee by a co-employee, a civil suit can also be brought against the employer. The ratification by the employer can be either express or implied in nature. (Fretland v. County of Humboldt (1999) 69 Cal.App.4th 1478)

What if a coworker acts without the ratification of the employer when causing injury or death to an employee in the course and scope of their employment? Per Labor Code Section 3601(a)(1), an employee injured by a willful and unprovoked physical act of aggression by a coworker can bring a civil suit against the coworker. Similarly, if the employee's injury or death is proximately caused by the intoxication of another employee, then a separate action for damages against the coworker can also be brought by the aggrieved employee. Per Labor Code Section 3601(b), the employer will not be held liable in both these instances where the employee can pursue a civil claim against a coworker.

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"In no event, either by legal action or by agreement whether entered into by the other employee or on his or her behalf, shall the employer be held liable, directly or indirectly, for damages awarded against, or for a liability incurred by the other employee under paragraph (1) or (2) of subdivision (a)." Labor Code Section 3601(b)

Second, an employee can bring an action for damages if their injury is aggravated by the employer fraudulently concealing the existence of injury and its connection to the worker's employment per Labor Code § 3602(b)(2). The employer's liability is limited to the damages proximately caused by the aggravation of applicant's injury due to the concealment. Furthermore, it is the employer's burden of proof to apportion damages between the injury and subsequent aggravation.

Third, per Labor Code § 3602(b)(3) a civil action can be pursued if the employee's death or injury is proximately caused by a defective product manufactured by the employer. The other requirements for this exception are that the product is then sold, leased or transferred for valuable consideration to an independent third person and that product is then provided for the employee's use by a third person. This is a relatively niche exception that would most commonly apply to employers engaged in the manufacturing of industrial or consumer products.

There is another niche exception laid out by Labor Code § 4558(b), that allows the employee to bring suit against the employer if their injury is proximately caused by the employer intentionally and willfully removing or failing to install a point of operation guard on a power press. A point of operation guard prevents an employee from reaching over, around or through a press to prevent injury.

Lastly, if the employer is uninsured for workers' compensation at the time of the injury, the employee can bring a civil suit against the employer. Per Labor Code § 3706, "if any employer fails to secure the payment of compensation, any injured employee or his dependents may bring an action at law against such employer for damages, as if this division does not apply."

In conclusion, while most injuries in the workplace will fall under the umbrella of worker's compensation being the exclusive remedy, employers should be aware of additional liability caused by these exceptions. Being aware of actions

that can lead to a civil suit brought by an employee is the first step in avoiding potentially costly exposure.

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