



# West Virginia Workers' Compensation Law Notes

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## LEGISLATION UPDATE

### **House Bill 2445**

On January 9, 2014, the House of Representatives introduced HB 2445. This bill would amend Section 23-4-23 of the Worker's Compensation Act, which currently provides that the permanent total disability benefits a claimant receives can be reduced by the after-tax amount of payments the claimant has received under a self-insurance plan, wage continuation plan, or a disability insurance policy. This amendment would allow claimants eligible to receive permanent total benefits under this section to be awarded annual cost-of-living allowances based upon the Consumer Price Index published by the United States Department of Labor. The bill has not yet become law. On January 9, 2014, the bill was referred to the House Industry and Labor Committee. If the Committee approves the bill, it will then go before the House of Representatives and the Senate for approval. If both the House and the Senate approve the bill, it will then be presented to the Governor to either be signed into law or vetoed.

## CASE LAW UPDATE

### **Morton v. W. Va. Office of Ins. Comm'r, 749 S.E.2d 612 (W.Va. 2013)**

In Morton v. W. Va. Office of Ins. Comm'r, the West Virginia Supreme Court of Appeals held that injuries a claimant sustains while assisting another employee with a purely personal task are not compensable. The claimant was employed as a secretary by Seneca Health Services. In 2010, she injured her right wrist and shoulder while assisting a Seneca contract employee. Another employee had borrowed maternity clothes from the contract employee and left the box in claimant's office for the contract employee to pick up. The contract employee had asked the claimant for assistance in lifting and transporting the box to

her vehicle and, upon lifting the box, the claimant lost her balance and fell backwards. Her claim was denied by the claims administrator as not being received in the course of and resulting from her employment. The claimant protested the denial, arguing that, as support staff, her job duties included assisting staff members with any tasks with which they required or requested assistance. She perceived no limitations to her duties in that regard. The OOI affirmed the claims administrator's order, finding that the employer derived no special benefit from the removal of the box, which was a voluntary act on the part of the claimant to assist a co-worker in a personal errand. The claimant appealed the OOI's decision and the Board of Review affirmed.

The Supreme Court of Appeals affirmed the Board of Review's decision. The Court noted that there was no question that the claimant's injury occurred in the course of employment in terms of time, place, and circumstance, thus the prong requiring that the injury occur in the course of employment was easily satisfied. However, the Court could discern no particular benefit to Seneca in the claimant's purely gratuitous gesture of assisting her co-worker. The Court declined to accept the claimant's suggestion that helping to lift the box was beneficial to the employer because it promoted generalized teamwork and camaraderie, finding this to be a slippery slope. Were the Court to accept this suggestion, it noted, the employer would in essence become an insurer of anyone injured on the premises, regardless of the nature of the activity causing the injury, so long as the employee was assisting in an effort to be helpful and collegial. The Court agreed with the Board of Review that an injury that occurs while gratuitously assisting a co-worker with a task of a purely personal nature, involving no instrumentalities of employment and without any alleged involvement of or benefit to the employer, does not "result from" employment.

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ATTENTION READERS, the editors of Thomson, Rhodes & Cowie West Virginia Workers' Compensation Law Notes invite you to submit questions you may have dealing with workers' compensation issues. The editors will compile questions received and periodically provide answers to recurrent issues. Submission of a question is no guarantee that an answer will be provided, but we will make every effort to answer as many questions as possible. Of course, for specific legal advice the reader should seek counsel from a qualified workers' compensation attorney.

Send questions to: Margaret M. Hock, Esquire, Thomson, Rhodes & Cowie, P.C., 1010 Two Chatham Center, Pittsburgh, PA 15219.

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