



RTGR

THIRD QUARTER
2018

Understanding Workplace Violence & Its Prevention

RTGR Managing Partner, Thomas Richard presented "Violence in the Workplace," outlining the complex issues surrounding violence in the workplace and what Human Resource Departments need to know, and do, to be proactive in preventing such events.

An understanding of workplace violence, and what is expected of employers is complicated; it combines many areas of law, including OSHA, labor and employment and workers' compensation to name just a few. Working to prevent workplace violence, and liability for such, requires comprehension of the law and diligence, before its too late.

OSHA General Duty Clause states employers are required to provide their employees with a place of employment that "is free from recognizable hazards that are causing or likely to cause death or serious harm to employees." Section 5(a)(1) of the Occupational Safety and Health Act (OSHA) of 1970. California employers have a legal obligation to provide and maintain a safe and healthful workplace for employees and to establish, implement, and maintain a written, effective Injury and Illness Prevention Program (IIPP). Title 8 of the California Code of Regulations, Section 3203 of the General Industry Safety Orders.

Workplace violence is any act or threat of physical violence, harassment, intimidation, or other threatening disruptive behavior that occurs at the work site. It ranges from threats and

verbal abuse to physical assaults and even homicide. It can affect and involve employees, clients, customers and visitors. Nearly 2 million American workers report having been victims of workplace violence each year.

Workers' compensation is an important consideration in the workplace violence analysis. Employees are "automatically entitled to recover benefits for injuries 'arising out of and in the course of the employment.'" *Piscitelli v. Friedenber* (2001) 87Cal.App.4th 953, 986 [105 Cal.Rptr.2d 88]. And remember, according to the Exclusive Remedy Rule, generally, employees who sustain an injury "arising out of and in the course of the employment" are limited to recovery under the workers' compensation system. *Torres v. Parkhouse Tire Serv., Inc.* (2001) 26 Cal. 4th 995, 1001. Also see Labor Code Section 3602(a). That means an entitled party is barred from civil actions against employers.

It is crucial to understand what constitutes "arising out of and in the course of the employment." The presentation outlined these parameters and exceptions. There are even instances where an employee or their family may be entitled to additional benefits, for example, where intentional employer conduct brings the employer "beyond the boundaries of the compensation bargain, for which a civil action may be brought." *Gunnell v. Metrocolor Laboratories, Inc.* (2001) 92 Cal.App.4th 710, 723 [112 Cal.Rptr.2d 195].

The presentation discussed defenses to certain actions and Government Code requirements, such as reporting and consequences for failure to do so. In addition, this presentation discussed negligent hiring, including its definition under the law, and prevention.

Speaking of prevention, every employer should have an effective Injury and Illness Prevention Program (IIPP) in place. OSHA has issued proposed rules to implement an IIPP, including active involvement of employees and their representatives in developing and implementing the Plan.

A plan should include methods the employer will use to coordinate implementation of the Plan and effective procedures to accept and respond to reports of workplace violence.

Of course procedures to develop and provide the training are essential; procedures to identify, evaluate and correct workplace violence hazards in a timely manner are also key. Finally, there should be procedures for post-injury response and investigation.

The [NCHRA Webinar: Workplace Violence- Handling the Aftermath](https://vimeo.com/288204760) presentation can be accessed at <https://vimeo.com/288204760>

For more information about this presentation or to attend or host an educational presentation, please e-mail Managing Partner, Thomas Richard at Tom@rtgrlaw.com.



APPORTIONING GENETICS – DEFENDANT’S BURDEN

One central aspect of defending workers’ compensation claims is apportionment. It should never be overlooked. So what is apportionment? Labor code 4664(a) states that the employer "shall only be liable for the percentage of permanent disability directly caused by the injury arising out of and occurring in the course of employment".

So what role does *genetics* play? If an employer is only liable for the disability caused by the workplace injury, what about those pre-existing or congenital issues causing disability?

In 2017, the 3rd District Court of Appeal issued the decision in *City of Jackson v. Workers’ Comp. Appeals Bd. (Rice)* (2017) 11 Cal. App. 5th 109. It held that an injured worker’s genetic makeup could factor into a physician’s analysis of non-industrial factors for purposes of apportionment under Labor Code section 4663.

In the Noteworthy Panel Decision, *Jensen v. County of Santa Barbara*, the WCAB explained: “it is now permissible to apportion disability

where that permanent disability is actually caused, at least in part, by a preexisting, asymptomatic, non-industrial condition or disease, or by congenital or genetic factors.”

It seems this would apply in nearly every case, so why is apportionment not always awarded? First it should be noted that the defendant carries the burden of proof with regard to apportionment.

Obtaining defense council who understand how to carry that burden is absolutely necessary. It is crucial to obtain a medical-legal opinion that is not speculative, which provides proper analysis between causation of injury and causation of permanent disability (which are very different), and which qualifies as substantial evidence.

RTGR attorneys understand what is necessary to secure enforceable apportionment, upheld by the Court. For more information about the creative solutions RTGR can offer, please e-mail us at info@rtgrlaw.com

OFFICE SPOTLIGHT:



RTGR is proud to represent employers and insurers in Sacramento and Stockton. Dan Graves is the managing partner of the Sacramento and Stockton office.

Dan is a founding partner of RTGR Law. He has over 14 years of litigation experience and is a Certified Worker’s Compensation Specialist. Dan frequently provides technical assistance to his clients through in person trainings where his clients benefit from the most up-to-date legal information. You can reach him at Dan@rtgrlaw.com

ATTORNEY SPOTLIGHT



Sara Bushman is an associate attorney who has appeared before the Workers’ Compensation Appeals Board, conducted depositions, written

trial briefs, and litigated & settled claims. Prior to RTGR Law, Sara worked as a Public Defender, where she gained valuable experience in litigation and trial work. Sara enjoys traveling, doing yoga, eating great food, and reading books. She can be reached at Sara@rtgrlaw.com

RTGR LAW LLP wins cases and crafts smart & cost-effective legal solutions for California employers, public agencies and insurers in Workers’ Compensation, subrogation, liability and employment matters. Our firm holds the highest (AV-Preeminent) rating from Martindale-Hubbell and all our partners are Certified Workers’ Compensation Specialists by the State Bar of California, Board of Legal Specialization. Let us show you how we can help: www.RTGRLaw.com

R | T | G | R
RICHARD • THORSON • GRAVES • ROYER