

Client Alert

Insurance

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Injury during work for COVID-19 vaccination – will the employer be liable to pay?

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With the arrival of COVID-19 vaccines in Hong Kong, employers may wish to encourage or even require their employees to be vaccinated for protection. An interesting question arises: If an employee gets injured on their way to or from the vaccination venue, will the employer have to pay compensation?

Two cases in the US may shed light on this. In *Firestone Tire Rubber Co. v Crawford*, 177 Ga. App. 242 (Ga. Ct. App. 1985), an employee who had previously met with a work-related accident was required by his employer to consult with his personal physician as a precondition to his return to employment. The employer paid his travel and accommodation expenses for attending the medical consultation. While en route to the appointment, the employee got injured in a road accident. The Court held that the employee's injuries arose out of and in the course of employment as he was required by his employer to attend the medical consultation.

Distinguished from *Firestone*, the more recent case of *Flores v Dependable Tire Co.*, 726 S.E.2d 776 (Ga. Ct. App. 2012) gave a clearer position. In *Flores*, an employee who had previously met with a work-related accident attended a doctor's appointment. Upon leaving the appointment, he was injured in a traffic accident. Although the employee was travelling in a vehicle provided by the employer's insurance company at his request, the Court held that this alone should not render the traffic accident work-related. The Court considered other countervailing factors to conclude that the accident was not work-related: (i) the employee was not going to or from work when the accident occurred; (ii) the medical appointment was not required by the employer; and (iii) the employer had no control over the employee's appointments.

By analogy, where an employer requires an employee to get COVID-19 vaccination, they will potentially bear liability for compensation if such employee meets with an accident causing injury on their way to or from the vaccination venue during work hours. The Court will certainly consider all relevant factors including the place of work, the working hours of the employee, whether the vaccination was taken with the employer's consent or under orders from the employer, and whether in taking the job, the employee was acting in the employer's interest or in furtherance of the employer's purpose.

It remains to be seen whether and how the Hong Kong courts will interpret these cases.

Want to know more?

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