

## Worker's Compensation: Aide's Knee Popped Or Gave Way At Work, Court Sees It As A Compensible Industrial Injury.

A nurse's aide with nineteen years experience at the hospital was walking around a patient's bed while making the bed and felt a pop in her right knee. Later that same day, while carrying hospital bed linens up a flight of stairs she felt another pop in the same knee.

She called in absent the next day, spoke with the charge nurse and was told to go to the emergency room. There were discrepancies between the aide's statements to the charge nurse, the E.R. notes and the incident report as to what, if anything, she was carrying up the stairs when her knee went out the second time.

The aide's worker's compensation claim was denied. She filed an appeal. The Missouri Court of Appeals ruled in her favor, approving her compensation.

### Court Expands Definition Of Industrial Injury

For a patient-care worker, an on-the-job injury does not necessarily have to involve an accident, that is, there does not have to be a fall, loss of balance, slip or unusual twisting or straining immediately prior to the moment when symptoms of injury are first noticed.

The only important factor is whether the injury happened in the course of employment, not whether there was some sudden, unexpected trauma that precipitated the injury, the court said.

According to the court, it is not necessary for the employee's job duties to create an increased risk of harm beyond what people are exposed to in everyday life.

It is not relevant, according to the court, that walking, walking up stairs, carrying relatively light items up stairs, walking around beds and making beds are activities of everyday life off the job, if an employee first experiences symptoms of injury while doing one of those things on the job. **Bennett v. Columbia Health Care**, \_\_ S.W. 3d \_\_, 2002 WL 1790865 (Mo. App., August 6, 2002).

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***An on-the-job knee injury does not have to be immediately preceded by a sudden unusual event such as tripping or slipping or by some unusual strain on the knee caused by bending, twisting or kneeling.***

***The law of worker's compensation is shifting away from the requirement that a worker suffer from a sudden accident.***

***The law now looks only to see if the injury itself arose out of and in the course of employment.***

***Although not immediately preceded or accompanied by an unforeseen and unusual event, an on-the-job injury is compensible when it is an unexpected result of the performance of the usual and customary duties of an employee which leads to a physical breakdown or a change in pathology.***

***Walking on level surfaces and up stairs are an integral part of this employee's job activities, in which she was engaged at the time her knee popped or gave way. It is not relevant that walking is also a part of everyday non-working life.***

MISSOURI COURT OF APPEALS  
August 6, 2002

## EMTALA: Court Puts Burden On Patient To Show Disparate Care.

A patient came to the hospital's emergency room on a referral from a medical clinic. His problems were listed as urinary retention, edema in his legs, high blood pressure and pain.

At the hospital he was seen ahead of other patients. Nurses took his vital signs, drew blood, inspected the Foley catheter that was inserted at the clinic, arranged for a chest x-ray and had him seen by the physician. The physician diagnosed bronchial pneumonia, wrote a prescription and sent him home. He died the next afternoon.

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***The key to the Emergency Medical Treatment And Active Labor Act (EMTALA) is for the patient to show that the screening and stabilization in the emergency room was different from that afforded to other patients.***

***A hospital does not have to delve into its own emergency screening and stabilization protocols in court to prove there was no disparate treatment.***

UNITED STATES COURT OF APPEALS  
FIRST CIRCUIT  
August 7, 2002

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The US Court of Appeals for the First Circuit upheld dismissal of the case based simply on the hospital's president's affidavit that there was no deviation in this patient's case from the standard treatment the hospital offers to other persons in the E.R. in the same condition.

The patient's attorneys made no effort to obtain the hospital's E.R. protocols or to prove a higher level of care was appropriate and within the hospital's capabilities. **Guadalupe v. Agosto**, \_\_ F. 3d \_\_, 2002 WL 1772941 (1st Cir., August 7, 2002).