

## Workers Comp: Assault At Work Not Covered, Was Domestic Violence.

A nurse was fatally shot by her husband in the building lobby of the clinic where she was working.

The administrator of her probate estate filed a workers compensation death-benefit claim on behalf of the dependent minor children who survived her.

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***An assault at work is covered by workers compensation if the origin of the assault is work-related and the injured claimant was not the instigator.***

***On the other hand, an assault at work is not covered if the assault was imported into the workplace from the employee's domestic or private life and was not exacerbated by the employment.***

COURT OF APPEALS OF OHIO  
December 16, 2004

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The Court of Appeals of Ohio acknowledged that workers compensation does pay death benefits to the children of an employee killed on the job.

The court also acknowledged that workers comp will cover an injury or fatality from an on-the-job assault, if the assault arises out of and in the course of employment.

However, the controlling factor is not the place of the assault or whether the employee was actually on the job. The controlling factor is whether the assault arose out of the employment rather than being imported into the workplace from the outside, as in this case. Foster v. Cleveland Clinic Foundation, 2004 WL 2914985 (Ohio App., December 16, 2004).

## Workers Comp: Notice Must Be Given To Employer At Time Of Injury.

A nurse went to the emergency room of the hospital where she worked and complained that she had exacerbated a previous abdominal injury while walking down a flight of stairs. The emergency room physician referred her to a surgeon.

Twenty months later she filed for workers comp and had abdominal surgery two weeks later.

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***An employee must promptly notify the employer when he or she sustains an injury on the job and will be filing a workers compensation claim.***

***Delay in reporting a claim can prejudice the employer's ability to investigate the claim.***

***When delay in reporting prejudices the employer's ability to investigate the employee's claim, the claim can be invalidated on that basis alone.***

NEW YORK SUPREME COURT  
APPELLATE DIVISION  
December 16, 2004

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The New York Supreme Court, Appellate Division, ruled the emergency room record was not sufficient notice to the hospital of an on-the-job injury.

In general, the 30-day notice requirement of the workers comp law is not enforced against the injured employee's claim unless delay in reporting has caused actual prejudice to the employer's ability to investigate the claim, but that was true here and the claim was disallowed. Claim of Miller, \_\_ N.Y.S.2d \_\_, 2004 WL 2902412 (N.Y. App., December 16, 2004).

## Patient Abuse: Court Looks At How The Evidence Will Be Weighed.

A certified nursing assistant was reported to the State for abusing an Alzheimer's patient by slapping and kicking her and throwing a cup at her.

The aide appealed on a technical legal point, that the State health law judge had not sustained the allegations against her beyond a reasonable doubt or by clear and convincing evidence.

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***The legal system has different formulas to express the burden of proof in different types of cases.***

***Beyond a reasonable doubt is the strictest. It applies only in criminal cases.***

***Clear and convincing evidence applies in civil cases where a criminal prosecution could follow from the allegations in the civil case.***

***Preponderance of the evidence is used in garden-variety civil cases. It just means that the facts necessary for the decision more likely than not are true.***

COURT OF APPEALS OF WASHINGTON  
January 3, 2005

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The Court of Appeals of Washington ruled that a professional license suspension or revocation decision must be supported by allegations proven by clear and convincing evidence.

However, the decision to take away an aide's certification need only be supported by allegations proven by a preponderance of the evidence. Ongom v. Dept. of Health, \_\_ P. 3d \_\_, 2005 WL 11689 (Wash. App., January 3, 2005).