



### Basics of Personal Injury Claims

If you suffer an accident or injury, your main concern is your health and the condition of any other individuals involved in the incident. But once those issues have been addressed, you may want to pursue legal action against the responsible party (or parties).

What to do: First, collect all the relevant documents and available evidence. Next, contact an attorney who is experienced in handling personal injury matters. Then you can sift through the viable options. For example, the attorney may help you arrange a settlement. It may not be necessary to file an official lawsuit.

Depending on your situation, a settlement may be the best approach. (Settlements can be reached at any stage of the proceedings.) This can spare you the time, expense and turmoil of a protracted trial. Negotiations will take place between the respective law firms. Any

proposed settlement terms must be agreed to by both sides.

However, if the circumstances warrant it, you may decide to proceed to trial. This decision should encompass a number of factors, including the extent of the injury and its impact on your family's future. In addition, remember that the personal injury laws vary from state to state, as do other aspects such as the filing process, time limits, types of damages sought and monetary amounts allowed.

Key point: A personal injury attorney can provide valuable guidance in this area. The attorney can draw on past experience, prior court decisions and legal trends and theories.

Documentation of evidence is usually critical to the case. Although an attorney can assist you, much of the

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### Follow New Guidance on Genetic Testing

The Genetics Information Nondiscrimination Act (GINA)—signed on May 21, 2008—has been phased into law over an 18-month period. This new federal legislation protects individuals against discrimination based on genetic testing. New regulations issued by the government went into effect on December 7, 2009.

Background: The new law enables people to take part in research without fearing that their DNA information might be used against them. For example, coverage could be refused to a woman facing a greater likelihood of having breast cancer. Employers also could use DNA information to decide whether to hire or fire workers.

Before the enactment of GINA, many states had already passed legislation prohibiting genetic discrimination. The degree of protection from these laws varies widely among the states. While GINA sets minimum standards that must be met in all states, it does not weaken a stronger protection provided by any state.

The new regulations clarify some of the rules in

GINA pertaining to group health plans. In addition, they provide definitions of certain key terms. For instance, the regulations define "genetic information" as information about genetic tests and the manifestation of a disease or disorder in an individual or his or her family members. Caveat: Genetic information does not include age or gender.

Under the new law, requests for genetic information cannot be made prior to enrollment in the plan for underwriting purposes. For this purpose, a request is made prior to enrollment if it is made before the effective date of plan coverage. Thus, health risk assessments offered prior to enrollment cannot request genetic information such as the medical history of a family.

Incidental collections of genetic information that could not be reasonably anticipated do not violate GINA. However, if it is reasonable to anticipate that genetic information will be provided, the incidental collection exception does not apply, unless there is an explicit statement that genetic information should not be provided.

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recordkeeping should be done before you meet, preferably at the time of the incident. Thus, as soon as possible, write down everything you can remember about what occurred before, during and after the accident. Video, photographs and witness accounts can bolster your position.

It is also necessary to document evidence establishing the extent of your injuries. Do not limit this to physical injuries; it also applies to mental and emotional distress. Similarly, keep records of all your treatments and any impact on your work and personal life.

If you were involved in a car accident, take photographs of the scene and obtain names and testimonies of any witnesses. For injuries caused by a defective product, maintain the product in the same condition it was in at the time of the injury. Also keep all packaging, instructions and receipts that accompanied the product. Remember that visual evidence will be helpful to your case. Once again, you can rely on your attorney to help you gather these records.

Other special circumstances may come into play. For example, if the lawsuit is being filed against the government, your attorney will file a notice of claim before any other action is taken. The claim informs the government about your injury and provides an opportunity for the government to respond before a case is initiated in civil proceedings. The government may reject the claim and enable the case to proceed.

In summary: Find out what legal options are at your disposal. This will enable you to make an informed decision.

### Who Says Talk Is Cheap?

A policy prohibiting sexual banter at work may seem severe, but it can help. If you implement such a policy, make sure you follow through on violations.

New case: A male worker threatened to blackmail his female supervisor if she did not consent to having sex with him. Then he told others that the supervisor was having an affair with another employee.

The company had a strict no-sex-talk rule. When the worker was fired for violating the rule, he sued. But the district court in Illinois dismissed the case. The worker was not meeting legitimate company expectations because he had broken a workplace rule.

### Brief's

\* **Search Functions**—The respiratory technicians at an Indiana hospital shared a computer. When pornographic sites were found in the "favorites" tab, an investigation revealed that only one technician was on-site when the sites were accessed. After he was fired, the technician sued, claiming he had been singled out. But the Seventh Circuit said the firing was based on a good faith investigation.

\* **Dressed Down**—You may deduct the cost of special clothing needed for your job, but tax breaks are denied if the outfit is suitable for everyday wear. New case: A pianist purchased gowns, dresses, shoes and other accessories to wear at her concerts. Although she did not wear any of the items outside of the concert halls, the district court in New York still disallowed her deductions.

\* **Gift-tax Exclusion**—The annual gift-tax exclusion for 2010 remains at \$13,000 per recipient. This means that you can give a nonspouse a gift of property valued at up to \$13,000 (\$26,000 if your spouse joins in the gift) without incurring any federal gift-tax liability. For instance, you and your spouse can give four children \$104,000 gift-tax-free this year. The gifts covered by the exclusion are removed from your taxable estate.

\* **What's the Call?**—Even if the economy has halted pay raises at your company, continue to conduct performance reviews. New case: A minor league umpire alleged he lost his job because of his age. The league said he was dismissed because of poor performance and gambling. But the league didn't have performance reviews to back up its claims. Now a jury will decide the outcome. Moral of the story: Continue the practice of conducting employee reviews in both good times and bad.

### Questions?

For more information about articles and information contained in the WAW Brief, contact Wharton Aldhizer & Weaver at (540) 434-0316 or send e-mail to info@wawlaw.com.

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