

Pre-Lawsuit Subrogation Considerations

- When does the Statute of Limitations (“SOL”) run? For bodily injury claims, it is **two years** from the date of injury, or if the defendant is a public entity, a claim must be filed in as little as **six months**.
- Who is the target defendant? Are they a private party or company (SOL 2 years), or a public entity (SOL 6 months).
- For motor vehicle accidents: Is there a traffic collision report prepared? Has the report been obtained? Did law enforcement take photos of the scene? Have those photos been ordered?
- For jobsite incidents: Is there an OSHA report? If so, has the employer obtained a copy of the report? Does OSHA have photos of the incident? Have they been obtained?
- Has the employer conducted an internal investigation of the incident? If so, do you have all the witness statements, documents, and photographs related to the incident the employer has in its possession?
- Does the employer have a contractual relationship with the target defendant? If so, is there a waiver clause in the agreement? (Note, a waiver clause does not automatically foreclose a subrogation claim).
- For premises liability cases: Was the injury at the worksite? If so, did the injury occur on the employer’s premises or the common area? Do you have the lease agreement? If the injury occurred offsite, who owns the property? Where did the accident occur? Are there any photographs of the areas where the incident occurred? Is there a separate management company, apart from the owner of the property, that manages the property?
- For products liability cases: Has the evidence been preserved? Has the manufacturer been placed on notice of the potential claim? Is an inspection being scheduled (critical to involve an attorney at this stage)?
- Is there an Owner Controlled Insurance Policy (OCIP) or a Contractor Controlled Insurance Policy (CCIP) that both the employer and target defendant belong to? If so, does the policy cover the workers’ compensation claims of the injured employees?
- Is the employee pursuing a personal injury lawsuit? If so, should the employer/carrier file a lien in the employee’s lawsuit, intervene in the employee’s lawsuit, or file its own lawsuit. The amount of the workers’ compensation lien may dictate which one is the right option.
- Negligence of the injured employee is not imputed to the employer, but the comparative fault of the employee can reduce the pot of money available to recover from.
- The employer’s negligence may reduce or eliminate the employer/carrier’s right of subrogation.

If you are unsure how to approach the subrogation claim, call us. We will be happy to discuss it with you, free of charge.

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