

Workers' Rights After an Industrial Fire or Explosion

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Many of today's industrial occupations involve exposure to fire, extreme heat and combustible materials. These jobs are not for the faint of heart, and workers in these dangerous occupations are exposed to risk every day. When the worst-case scenario occurs—such as recent events at the Accurate Energetic Systems plant in Tennessee or the Davis Industries recycling plant in Northern Virginia—explosions or large-scale fire events put workers at risk of life and limb. Industrial fires and explosions are highly common, with the National Fire Protection Association (NFPA) reporting that between 2017 and 2021, U.S. fire departments responded to an [average of 36,784 fires at industrial and manufacturing properties](#).

Events of this kind can cause a variety of personal injuries to workers, from external injuries such as burns to orthopedic harm to internal injuries such as pulmonary damage from smoke inhalation or traumatic brain injury from the concussive effects of an explosion. Explosion and fire injuries can be minor, catastrophic or anything in between. Regardless of the severity or type of injury, a worker who is unfortunately (and sometimes tragically) exposed to a fire or explosion at the workplace will have a host of immediate concerns. *How will my medical care be covered? Am I financially responsible or at risk? Do I have any legal rights to pursue the responsible parties?* Workers who are exposed to the risk of fire and explosion should know that in the event of an injury, they have a few core rights that will be central to their recovery and peace of mind.

Medical Treatment and Workers' Compensation Benefits

Injured workers have the immediate and ongoing right to medical treatment to address any burns or injuries they may have suffered in the explosion or fire. Those medical costs are always covered by their employer's workers' compensation insurance carrier. An employer is required by law to pay for this insurance.

Importantly, depending on the jurisdiction, coverage does not stop at physical injuries. Workers' compensation carriers may be required to cover care for mental and psychological injuries. In the case of a fire or explosion, post-traumatic stress and other related injuries can be particularly acute.

After notifying the employer of the injury, the worker or their loved ones should promptly work with the employer to determine how to seek benefits and ultimately file a workers' compensation claim. While not required, an injured worker can seek counsel from a workers' compensation attorney, who can assist the worker and their family in navigating the process, meeting and complying with all statutory deadlines, and maximizing their recovery of benefits.

Third Party Liability

A worker injured by a fire or explosion on the job has the right to investigate and, if warranted, pursue a civil lawsuit against a responsible third party. As a general rule, if a worker's employer or co-employee is entirely responsible for causing the fire or explosion, the injured worker's exclusive remedy will be through the workers' compensation system. While there may be small exceptions to the "exclusive remedy rule," this rule is broad and typically covers all tort claims an injured worker and his or her dependents will have against the employer. See, e.g., *Brady v. Ralph M. Parsons*, 327 Md. 275, 279 (Md. 1992) ("With the exception of certain narrow grounds ... workers' compensation is the exclusive remedy of the injured employee and his dependents against an employer for an injury or death covered by the compensation law.").

However, the exclusive remedy rule does *not* bar the injured worker's tort claims against third parties. This means that if some person or entity other than the employer is responsible, in whole or in part, for causing the fire or explosion and the resulting injuries, the injured worker may pursue a civil claim against that person or entity. This could be, for example, a utility company that services or maintains gas lines or systems, a contractor working with the employer at a job site, a manufacturer or seller of a defective product, or a landowner who failed to keep the premises reasonably safe from the threat of fire. Often, a post-incident investigation—for example, by the Occupational Safety and Health Administration or a state equivalent workplace safety agency or by a local fire marshal—will identify the parties responsible for causing the fire or explosion. These investigations may also arrive at conclusions surrounding the cause and origin of a fire or explosion. An injured worker and their attorney should keep a close eye on the outcomes of these investigations as they can lay the groundwork for a successful civil claim.

In civil cases involving workplace fires and explosions, the doctrines of “comparative fault” and “contributory negligence” often come into play. Contributory negligence is a rule recognized by a small minority of states—including Maryland, Virginia and the District of Columbia—under which an injured worker is unable to recover damages from a responsible third party if the injured worker is even 1% at fault. Comparative fault, recognized by the majority of states, is a rule under which the injured worker may still recover damages even if they were partially responsible themselves, but their damages may be decreased by the percentage of fault attributable to their own actions. In the case of a fire or explosion, these doctrines may apply in a number of scenarios. For example, if the worker failed to follow their employer's policies or procedures or if the worker failed to wear certain protective gear that could have eliminated or reduced their injuries, the injured worker's recovery may be eliminated or reduced by these doctrines.

An injured worker should also understand that in the case of a recovery against a third party, the workers' compensation carrier may have a right to recover a portion of the money they paid to cover the injured worker's medical expenses and/or to indemnify the worker for their loss. The contours of this right of “subrogation” differs state by state; however, the principle is the same throughout the country.

Freedom from Discrimination or Retaliation

Finally, a worker injured on the job, whether by a fire/explosion or some other means, has the right to be free from discrimination or retaliation due to their injuries. It is against the law for an employer to take adverse action against an employee for filing a workers' compensation claim or pursuing a lawsuit against a third party to recover for their losses. It is similarly a violation of a number of federal laws, including the Americans with Disabilities Act, for an employer to discriminate against a worker who has suffered injury. If an injured worker experiences retaliation or discrimination from their employer as a result of their workplace injury and any measures they took to protect their rights, that worker may have a separate claim against the employer.

Conclusion

Suffering injury due to a fire or explosion on the job can be harrowing and life-altering. But injured workers are not without rights, and systems are in place to help workers recover their health, pursue justice and ensure that they can continue to move forward.

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