



August 2025 Subrogation Newsletter

Subrogating Workplace Violence Claims Against Employers and Employees

Workplace violence poses a growing challenge within workers' compensation law, especially when it involves intentional acts. While the Exclusive Remedy Rule generally prevents employees from suing their employers for on-the-job injuries, many states carve out exceptions for intentional or grossly negligent misconduct (notably, 43 states permit such lawsuits). Courts also treat subrogation differently by jurisdiction. Some carve out exceptions to the Anti-Subrogation Rule, allowing insurers to reclaim from third-party recoveries.



When the violence stems from a co-employee, the scenario becomes even more complex. Suppose the act occurs outside the scope of employment or isn't connected to normal work functions. In that case, many jurisdictions allow the workers' comp carrier to assert a lien against any recovery the employee obtains from the co-worker. For subrogation professionals, the upshot is clear: knowing how each state defines "intentional acts" and where exceptions apply is critical. Careful, proactive handling—including early legal consultation and jurisdiction-specific analysis—can unlock recovery opportunities that antithetical doctrines like Anti-Subrogation might otherwise block



Iowa Workers' Comp Pitfalls: Small Errors That Jeopardize Large Liens

On July 23, 2025, the Iowa Court of Appeals reaffirmed that even minor procedural missteps can completely void a carrier's subrogation rights in workers' compensation cases. In *Midwest Builders' Casualty Mutual Co. v. RP Constructors, LLC*, the insurer failed to issue the required 90-day demand under Iowa Code §85.22(2), leading the court to strike down its lien and

subrogation suit entirely. This case underscores a recurring theme in Iowa subrogation law: compliance with statutory timelines is not optional—it is critical.

The decision echoes prior case law, particularly *RollinsCorp. v. Guessford* (2007), where a carrier similarly lost its subrogation rights over a \$59,221 lien because it didn't properly serve the 90-day demand once the employee settled a third-party claim. The takeaway for subrogation practitioners is clear: rigorous attention to procedural requirements, especially those statutory demand deadlines, is essential to preserving lien recovery opportunities and avoiding high-stakes forfeitures.

Breaking Down French v. Amazon: Big Shift in Arkansas Subrogation Law

Arkansas has long been a notably difficult venue for insurance carriers pursuing subrogation, particularly in workers' compensation, due to the court-developed Made Whole Doctrine. This doctrine has historically blocked carriers from asserting their statutory subrogation rights until a court judicially determines that the injured worker has been fully compensated.



However, the recent federal decision in *French v. Amazon.com, Inc.* offers a major doctrinal break: the U.S. District Court for the Eastern District of Arkansas held that Section 11-9-410(b) of the Arkansas Code authorizes a workers' compensation insurer to initiate a third-party subrogation action before any determination that the employee has been made whole. While this doesn't eliminate the need for a made-whole finding to distribute recovered proceeds, it empowers carriers to preserve their claims early on, giving them a critical procedural advantage in an otherwise hostile subrogation environment.

Fresh From the Mic: The Subrogation Support Network's Latest Episode



Join host Ashton Kirsch and guest Mark Solomon for an in-depth exploration of workers' compensation subrogation in Texas, diving into the unique legal landscape of the Lone Star State—from first-dollar recovery and non-subscriber rules to intervention strategies and practical tips for maximizing recoveries. Gain valuable insights into navigating Texas's business-friendly subrogation laws and best practices for protecting your clients' interests.

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