



ASK US

TAYLOR, WELLONS, POLITZ & DUHE, APLC

What qualifies as an "accident" under the Louisiana Workers Compensation Act.

An accident is defined as an unexpected or unforeseen, actual, identifiable, precipitous event happening suddenly or violently, with or without human fault, and directly producing at the time, objective findings of an injury. The definition specifically excludes degenerative conditions unless the condition becomes symptomatic due to an accident.

Is a mental injury compensable in Louisiana?

Louisiana Workers Compensation law recognizes two types of mental injuries: Physical/mental where the mental disability is precipitated by a physical injury and mental/mental in which the claimant is subjected to a sudden unexpected and extraordinary stress related to the workplace. The Louisiana courts have not been receptive to mental disability claims related to losing one's job or altercations with superiors or co-workers.

Does an employee covered under the Longshore and Harborworker's Compensation Act have the right to select the doctor who will treat his or her injuries?

Yes, an employee covered by the LHWCA has the right to an initial free choice of treating physician. Once chosen, the employee may only change physicians without consent of the employer under certain circumstances.

What is the jurisdictional limit for a jury trial in Louisiana state courts?

\$50,000.

When may a suit filed in state court be removed to federal court?

If a federal question is involved, or the parties are from different states and the amount of damages is likely to exceed \$75,000.

What is the prescriptive period for breach of contract cases?

Generally, suits for a breach in the terms of a contract are governed by a ten (10) year prescriptive period. However, one must be careful to distinguish a contractual relationship versus one that is based on an "open account". The latter is subject to a three (3) year prescriptive period.

Can a party recover the attorney fees it has incurred as a result of the filing of suit for breach of contract?

Attorney fees will not generally be awarded unless the contract expressly provides for the payment of same and the parties have agreed to it in writing.





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Are there a certain set of guidelines or rules that must be followed when attempting to collect a debt or balance due?

The Fair Debt Collection Practices Act (FDCPA) provides legal boundaries for the collection of most debts. A failure to comply with the FDCPA can result in severe penalties.

Is mediation or arbitration mandatory in Louisiana?

Generally, no. However, contractual agreements that contain arbitration provisions are enforceable. Additionally, many courts strongly encourage mediation before trial, and in fact, mediation has become a widely-used method of resolving litigation.

Does Louisiana law impose "joint and several" liability, referred to in Louisiana as "solidary" liability, on co-defendants in personal injury litigation?

Effective July of 1996, Louisiana adopted a "pure comparative fault" scheme of apportioning fault among two or more persons that may have contributed to an accident. For accidents occurring after this date, the general rule is that a defendant will only be required to pay damages associated with his percentage of fault. One exception to this rule is that a defendant will be jointly and severally, or solidarily, liable with another party with whom the defendant conspired to commit an intentional or willful act. Further, a defendant will not be entitled to reduce his exposure based on the plaintiff's alleged percentage of fault if the defendant committed an intentional tort against the plaintiff. Finally, a defendant may be legally liable for the damages caused by the fault of another party in cases in which a contractual indemnification agreement exists between the parties. Such agreements must be worded in a very specific manner to obligate one party for the fault of another party.

Does Louisiana law acknowledge bad faith damages?

Bad faith damages are under most circumstances only awarded against insurance company for specific behavior set forth in Louisiana Revised Statutes 22:658 and 22:1220. The penalties are not severe, but under the former statute can result in an award of attorney's fees and 10% of the amount owed under the terms of an insurance policy. For additional information about whether either of these statutes is applicable to the facts of your case, please give us a call.

What is the prescription period for personal injury claims?

Generally, one year from the date of the injury .

Are accident reports prepared by a business owner discoverable?

There is no hard and fast rule. Some courts allow you to release only portions of accident reports which do not contain information which would be protected by attorney/client or work product exclusion.





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What is the current legal interest rate?

2002 - 5.75% Legal interest attaches from date of judicial demand.

Is medical pay coverage mandatory in Louisiana?

No.

Are punitive damages recoverable in Louisiana?

Yes, but only under limited circumstances. When injuries are caused by an intoxicated driver, punitive damages are recoverable. La. Civ. Code Art. 2315.4. An insurer may exclude coverage for punitive damages in its policy.

