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# Gillette injuries

Injuries are generally thought to be the result of a specific occurrence. However, Minnesota workers' compensation law recognizes that not all injuries occur as the result of a single incident. Some injuries are the result of a degenerative process caused by the physical stresses of particular jobs over a period of time. These injuries are referred to in workers' compensation parlance as "repetitive minute trauma," or "*Gillette*" injuries.

The term "*Gillette*" derives from the case *Gillette v. Harold, Inc.*, 257 Minn. 313, 101 N.W.2d 200, 206-07 (1960). In the *Gillette* case, the employee worked as a sales clerk for Harold Department Store. Her position required her to be on her feet most of the day. During her employment at Harold Department, she underwent surgery on her left great toe for a condition which was not work related. Two months after the surgery she returned to work and performed all of her regular duties. As time went by she experienced increasing pain in the affected toe. Eventually her doctor restricted her from working at Harold Department because her toe was aggravated by the prolonged walking and standing the job required.

The Minnesota Supreme Court ruled that the employee had sustained an injury which was compensable under the Minnesota Workers' Compensation Act. The Court defined a *Gillette* injury as a "personal injury arising out of and in the course of employment as a result of the cumulative effect of repetitive minute trauma over a period of time." Since the *Gillette* decision, the *Gillette* doctrine has been well established in Minnesota workers' compensation law.

The Court considers evidence of the following when deciding whether a *Gillette* injury has occurred:

1. The employee's specific work activity.
2. The effects of that work activity upon the employee.

3. The symptoms the employee experienced in doing the work over and over.
4. The physician's opinion as to whether the employee's work activity was a substantial contributing factor to his or her injury.

In the past, case law required the employee to testify that specific work activities caused specific symptoms in order to prove a *Gillette* injury. The Minnesota Supreme Court decided *Steffen v. Target Stores* on July 12, 1994. That case appears to lighten the employee's burden of proof. In that case, the court held that a *Gillette* injury is primarily a medical issue. The question of a *Gillette* injury now depends primarily on medical evidence of which the employee's testimony linking specific work activities to specific symptoms is merely one factor on which the medical expert would rely in rendering a causation opinion. After *Steffen*, the physician's opinion appears to be the most important factor courts will consider in determining whether a *Gillette* injury has occurred.

*Gillette* injuries are as compensable as injuries which occur as a result of a specific occurrence. Because of the nature of these injuries, however, the question arises as to the exact date of injury. This question is significant because generally it is the insurer covering you as of the "date of the injury" which is responsible for providing workers' compensation benefits. The general rule holds that a *Gillette* injury has not occurred, or "culminated," until the employee has either lost time from work or required a change of duties because of his or her physical condition. It should be noted, however, that there are frequent exceptions to this rule depending upon the facts of each individual case.

## Note

Reporting of all possible work injuries is essential for effective loss control. Potential *Gillette* injury claims may be harder to spot. As an employer you are best advised to report a possible *Gillette* injury as soon as you have information that the employee has received medical treatment or has lost time from work as the result of a condition which the employee or the employee's physician believes is work related. In some instances, you may receive "notice" of an injury or

medical treatment before there has been any diagnosis of a *Gillette* injury. It is important that you report the occurrence to us immediately, whether or not a *Gillette* injury has been identified, so that we can do all necessary fact-finding and make a prompt determination regarding compensability.

If you have any questions about the issues addressed in this *Legal Advisory*, please call Lynn, Scharfenberg & Hollick at (952) 838-4450.