

Wrongful Deaths in the Workplace: What Surviving Family Members Must Know in the Wake of a Tragedy

Wrongful deaths in the workplace are some of the worst tragedies that happen to thousands of families every year. Families send their loved ones off to work expecting them to return home at the end of the day, only to receive the phone call no one wants to receive: *“there’s been an accident”*. Receiving this kind of phone call is only the beginning of what will surely become a long, emotionally trying time in grief-stricken families lives.

This article will seek to lay out exactly what surviving family members must know to protect their rights and the rights of their deceased loved one after they’ve become victims of a wrongful death. Whether the wrongful death occurred due to the negligence of the employer or another employee, victims have rights even after death, and personal injury attorneys are there to ensure those rights are upheld.

According to OSHA (Occupational Safety and Health Administration), the statistics for construction site-specific related deaths is staggering: nearly 19%. OSHA lists the causes of the most common reasons for construction site employee deaths (dubbed a little too ominously “the fatal four”).

The fatal four, according to OSHA:

1. Electrocutions
2. Falls
3. Crush injuries (caught between or inside construction equipment)
4. Blunt force injuries (struck by falling or swinging object not properly secured)

When a family member loses a loved one to a workplace related injury, the last thing they want to think about is the legal process to follow. They’re grieving, mourning the loss of a beloved family member and don’t want to think that the law may need to be involved for the deceased to see justice served.

Grieving families need their rights protected, an experienced attorney

Unfortunately, the reality is much different: it’s important to hire an attorney as soon as it becomes feasible after a wrongful death. An experienced attorney will be understanding and compassionate to the family’s grief and ensure the legal process doesn’t cause them further emotional anguish. An experienced attorney knows how to protect the rights of the decent and their surviving family members.

In the weeks following a death in the workplace it’s important to determine whether the death occurred due to the negligence of another. Employer liability involving wrongful deaths is a time-sensitive matter that must be addressed within the statute of limitations in order to provide the maximum amount of compensation for the grieving family. No dollar amount will ever replace a family member, but lost wages and the strain of final expenses can wreak financial havoc.

Workers’ compensation benefits vs. lawsuit against employer: a victim’s very personal choice

In the case of serious bodily injury that does not result in death, a victim has a very difficult decision to make (this decision can be made by surviving family members in the event of their death): does the injured employee sue the employer in a court of law, or do they file for workers’ compensation benefits? A victim cannot do both.

If a victim accepts workers' compensation benefits (as we explained in the Shaked Law Blog's [Workers' Compensation](#) article) they forfeit the right to sue the employer for the accident and injuries sustained. However, it works in reverse as well: if a victim chooses to sue the employer for their pain and suffering, they may not also claim workers' compensation benefits.

Wrongful deaths and the survival actions that follow: the scary legal jargon only your skilled attorney can make sense of!

In the Shaked Law Blog series related to [Wrongful Death Actions](#) we gave an in-depth look at the differences surrounding the statute of limitations in wrongful death versus that of a personal injury accident lawsuit. We established the following:

Each state differs on their statute of limitations regarding personal injury, but there are inherent differences between the statute of limitations surrounding personal injury and the statute of limitations surrounding a wrongful death. The state of Florida has clearly defined their statute of limitations in regard to wrongful death [on their website](#).

Also included in our wrongful death series was [Everything You Need to Know About a Wrongful Death Lawsuit, Part 2: Survival Actions](#) and in it we established the following important point to be made about survival actions:

Furthermore, an attorney for the family may be able to obtain damages for personal injury as related to the accident that caused the wrongful death. This area of a personal injury attorney's practice of law is known as pursuing *survival actions*. In the case of a wrongful death, a personal injury has still been brought upon the deceased as a result of an accident—they may have suffered in terrible pain before they passed away.

In the case of a wrongful death in the workplace, there are several other factors the judge and jury will take into consideration. If surviving family members choose to pursue legal action against the defendant (i.e. the company, employer, or another employee) the court will want to establish the following before ordering compensation be granted to the victim's family:

- Did the employee die because of the defendant's negligent behavior at the workplace?
- Did the defendant knowingly cause pain and suffering to the employee before their passing?
- Had the employee not passed away, would he or she have had grounds for a lawsuit in regard to the accident?

These questions, from the plaintiff's perspective, would be the basis of the lawsuit they are bringing against the defendant for their act of carelessness that directly resulted in the death of their loved one. An attorney who has handled these cases for clients in the past will have vast experience in the "discovery rule" and be able to advise the family on this very time sensitive situation.

Important to remember: Within a wrongful death claim, the statute of limitations period is said to begin when the wronged party (the "plaintiff") discovers through the reasonable due diligence of a skilled attorney, the cause for the death of the victim. In this case, establishing how a decedent passed away in a workplace accident in a timeframe that's considered reasonable.

Contact us to schedule a complimentary consultation. There's no obligation. Take the first step and call today: (877). 529-0080

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