

1051 DUTY OF WORKER: PREOCCUPATION IN WORK MINIMIZES DUTY

Momentary diversion of attention or preoccupation of a worker in the performance of work minimizes or reduces the degree of care that would otherwise be required of him or her; nevertheless, a worker has the duty to use the same degree of care for his or her safety that an ordinarily prudent worker would use under such conditions (when preoccupied with work) (when his or her attention was momentarily diverted by work).

COMMENT

The instruction and comment were initially approved by the Committee in 1974. The instruction was revised in 1987 and reviewed without change in 1989. Editorial changes were made in 1992 to address gender references in the instruction. No substantive changes were made to the instruction. The comment was updated in 1995.

Bourassa v. Gateway Erectors, Inc., 54 Wis.2d 176, 194 N.W.2d 602 (1973); Criswell v. Seaman Body Corp., 233 Wis. 606, 620, 290 N.W. 177 (1940); Patterson v. Edgerton Sand & Gravel Co., 227 Wis. 11, 277 N.W. 636 (1938); Neitzke v. Kraft-Phenix Dairies, Inc., 214 Wis. 441, 253 N.W. 579 (1934); Sandeen v. Willow River Power Co., 214 Wis. 166, 252 N.W. 706 (1934); Hodgson v. Wisconsin Gas & Light Co., 188 Wis. 341, 206 N.W. 191 (1925). See also Prill v. Hampton, 154 Wis.2d 667, 453 N.W.2d 909 (Ct. App. 1990); Parlee, "Preoccupation with Work Defense to Contributory Negligence," Wisconsin Lawyer, May, 1995 at 24-26.

To justify use of this instruction, there must be evidence of a particular and immediate hazard that was unknown to one who was preoccupied with or momentarily diverted by work. Walsh v. Wild Masonry Co., 72 Wis.2d 447, 454, 241 N.W.2d 416, 419 (1976); Suhaysik v. Milwaukee Cheese Co., 132 Wis.2d 289, 295-96, 392 N.W.2d 98 (1986).