8200 Hampson Street, Suite 302
New Orleans, LA 70118

(504) 266-2024

frank@whiteley-law.com

Louisiana Workers Compensation

Chapter 1

Employment Status

Workers' Compensation law is founded on the principle that employee injuries are a cost of doing business. That cost should be absorbed by the employer and ultimately passed on to the consumer. That principle is only served, however, if compensation is limited to persons that are engaged in the employer's trade, business, or occupation, i.e., employees.

Presumption of Employee Status

> La. R.S. 23:1044:
>
> A person rendering service for another in any trades, businesses or occupations covered by this Chapter is presumed to be an employee under this Chapter.

The key terms in this presumption are "trades, businesses or occupations." Not everyone that provides a service to another person is presumed to be that person's employee. For example, someone that is paid to mow the lawn at a person's private residence generally will not be presumed to be the homeowner's employee. The presumption of employee status would not apply unless the service provided, mowing the lawn at a private residence, somehow were part of the homeowner's trade, business or occupation, which, while possible, generally is not the case.

Excluded Employees

The Louisiana Workers' Compensation Act specifically excludes some employees from coverage, regardless of whether the service provided is part of an employer's trade business or occupation. Most importantly, La. R.S. 1035.2 provides that no compensation is due to an employee covered by the Federal Employer's Liability Act (FELA), the Longshoremen and Harbor Workers' Compensation Act (LHWCA), or any of its extensions,[1] or the Jones ACT.

Other excluded employees are:

(1) Public Officials, as defined by La. R.S. 42:1. *La. R.S. 23:1034 (A) and (B).*

(2) Employees of Contractors with the State, a political subdivision of the State, or incorporated public board or commission. *La. R.S. 23:1034(A).*

(3) Employee of a private residential householder regarding the private residential premises of such householder. *La. R.S. 23:1035(B)(1).*

(4) Musicians and performers who are rendering services pursuant to a performance contract. *La. R.S. 23:1035(B)(2).*

(5) Members of a crew of an airplane engaged in crop dusting are not the employees of the farming operations that they service. *La. R.S. 23:1045(A)(1).*

(6) Uncompensated officers or members of the board of directors of charitable organizations. *La. R.S. 23:1046.*

(7) Real Estate brokers or sales persons. *La. R.S. 23:1047.*

(8) Landmen engaged in the acquisition or divestiture of mineral rights. *La. R.S. 23:1048.*

[1] Defense Base Act (DBA), Outer Continental Shelf Lands Act (OCSLA) and Non-Appropriated Fund Instrumentalities Act (NAFIA).

Multiple Employers

The most common multiple employment relationships are joint employment and borrowed employees.

Joint Employers

When, at the time of an injury, the employee is employed and paid jointly by two or more employers, both employers are responsible for the employee's workers' compensation benefits. As between the employers, however, contribution is based on each's employer's portion of the employee's wages. *La. R.S. 23:1031(B).*

EXAMPLE: Employee is hired jointly by Employer A and Employer B to clean their separate offices in the same building. Employer A's office is twice as big as Employer B's office, so, by agreement, Employer A pays 2/3 of Employee's wages, and Employer B pays 1/3 of Employee's wages. Employee is injured while cleaning the offices. Employee may recover full compensation benefits from either employer. As between Employer A and Employer B, however, Employer A is responsible for 2/3 of the benefits, and Employer B is responsible for 1/3 of the benefits.

Joint employment is not to be confused with multiple employment with separate employers. If a person has two separate jobs, and is injured on one of those jobs, only the employer on whose job the employee was injured owes workers' compensation benefits.

Borrowed Employee

A borrowed employee is an employee that, while employed by one employer ("general employer"), works under the control and direction of another employer ("special employer"). As with joint employers, both the general employer and the special employer are responsible for the employee's workers' compensation benefits. As between the two employers, each is responsible for one-half of the benefits. La. R.S. 23:1031(C).

I*ndependent Contractors*

> La. R.S. 23:1021(7):
>
> Independent Contractor means any person who renders service, other than manual labor. For a specified recompense for a specified result either as a unit or as a whole, under the control of the principal as to the results of the work only, and not as to the means by which such result is accomplished, and are expressly excluded from the provisions of this Chapter unless a substantial part of the work time as an independent contractor is spent in manual labor by him in carrying out the terms of the contract, in which case the independent contractor is expressly covered by the provisions of this Chapter.

The key phrase in this provision concerns independent contractors that spend a substantial part of their work time doing manual labor. Such independent contractors are entitled to workers' compensation benefits, despite their independent contractor status. The terms "substantial part" and "manual labor" have not been defined precisely by Louisiana courts. A "substantial part of the work time" does not necessarily have to be the majority of the work time. "Substantial" means simply that the manual labor may not be "immaterial" or "insubstantial." Whether an independent contractor engaged in manual labor is a factual issue to be determined on a case by case basis. Louisiana courts generally have been lenient, however, in finding that an independent contractor that participates in physical activity as part of the work is engaged in manual labor.

Note: The Louisiana legislature specifically excluded one activity, operation of a truck tractor or truck tractor trailer, from the definition of manual labor. La. R.S. 23:1021(7).

Statutory Employers

When a party (referred to in the statute as the "principal") undertakes to execute any work that is a part of its trade, business or occupation, and contracts with another party (referred to in the statute as the "contractor") to execute the whole or any part of the work, the principal is the statutory employer of the contractor's employees. La. R.S. 23:1061(A)(1). A contractor's employee may recover workers' compensation benefits from a statutory employer to the same extent as from a direct employer. When a statutory employer pays workers' compensation benefits to a contractor's employee, however, the statutory employer is entitled to indemnity from the contractor.

A statutory employer relationship may be established in the following two ways:

Two Contract Doctrine

A statutory employer relationship exists when the work provided by the contractor is contemplated by or included in a contract between the principal and any other party other than the contractor. La. R.S. 23:1061(A)(2).

EXAMPLE: Acme Company enters into a contract with General Contractor under which General Contractor will build Acme Company's office building. General Contractor then enters into a contract with Subcontractor to install the roof on Acme Company's office building. Subcontractor's employee is injured while installing the roof. Under the Two Contract Doctrine, now codified in La. R.S. 23:1061(A)(2), General Contractor is the statutory employer of Subcontractor's employees.

NOTE: In Allen v. Exhibition Hall Authority, 842 So.2d 373 (La. 2003), the Louisiana Supreme Court resolved a dispute among appellate courts and held that the two contract doctrine does not have a temporal requirement. If the necessary two contracts are in place, the general contractor is immune from tort liability to the subcontractor's employees, regardless of which contract was entered into first.

Statutory Employer relationship when only one contract exists

When the Two Contract Doctrine does not apply:

(i) A statutory relationship shall not exist between the principal and the contractor's employees unless there is a contact between the principal and the contractor recognizing the principal as the statutory employer. La. R.S. 23:1061(A)(3).

(ii) When the contract recognizes a statutory employer relationship, it creates a rebuttable presumption that the principal is the statutory employer of the

contractor's employees (whether direct or statutory employees). This presumption may be overcome by showing that the work is not an integral part of or essential to the ability of the principal to generate its goods, products or services.

EXAMPLE: Acme Company's contract with General Contractor provides that Acme Company is the statutory employer of General Contractor's employees. Therefore, Acme Company is presumed to be the statutory employer of General Contractor's employees. Unless that presumption is rebutted by showing that the work that the employee performed was not an integral part of or essential to Acme Company's ability to generate its goods, products or services, Acme Company is the statutory employer of General Contractor's employees. As statutory employer, it is liable to the General Contractor's employees for injuries sustained in the execution of the contractor. As discussed in the next chapter, however, it also enjoys the benefit of immunity from tort claims filed by General Contractor's employees.

The statutory employer relationship extends to subcontractors as well as contractors. When a statutory employer relationship exists between a principal and a contractor, and the contractor hires sub-contractors to perform some or all of the work, both the principal and the contractor are the statutory employers of the sub-contractors' employees.