

Statutory Employers: Master Not in Your Own House

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STATUTORY EMPLOYMENT

- Although above term not found in the Workers' Compensation Act, certain provisions of the Act create employer status in principal-independent contractor situations.
- Under those provisions, certain entities, especially general contractors at construction sites, are deemed employers for WC purposes of the employees of sub-contractors who have not secured WC insurance.
- Those entities are deemed statutory employers for WC purposes and are immune from common-law negligence lawsuits.

STATUTORY BASES

ARTICLE II

Damages by Action at Law

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Damages by Action at Law

Section 203 of Act, 77 P.S. section 52

An employer who permits the entry upon premises occupied by him or under his control of a laborer or an assistant hired by an employee or contractor, for the performance upon such premises of a part of the employer's regular business entrusted to such employee or contractor, shall be liable to such laborer or assistant in the same manner and to the same extent as to his own employee.

Construed to mean if entity meets the above criteria, it gains same immunity as a conventional employer – i.e., free of negligence liability.

This section invoked when a party seeks dismissal on grounds of immunity in motion for summary judgment in court of common pleas.

STATUTORY BASES

ARTICLE III

Liability and Compensation

- contains two statutory employer provisions -

STATUTORY BASES

ARTICLE III

Liability and Compensation

First: Section 302(a) of the Act, 77 P.S. section 461

A contractor who subcontracts all or any part of a contract and his insurer shall be liable for the payment of compensation to the employees of the subcontractor unless the subcontractor primarily liable for the payment of such compensation has secured its payment as provided for in this act. Any contractor or his insurer who shall become liable hereunder for such compensation may recover the amount thereof paid and any necessary expenses from the subcontractor primarily liable thereafter.

For purposes of this subsection, a person who contracts with another (1) to have work performed consisting of (i) the removal, excavation or drilling of soil, rock or minerals, or (ii) the cutting or removal of timber from lands or (2) to have work performed of a kind which is a regular or recurrent part of the business, occupation, profession or trade of such person shall be deemed a contractor, and such other person a subcontractor. This subsection shall not apply, however, to an owner or lessee of land principally used for agriculture who is not a covered employer under this act and who contracts for the removal of timber from such land.

STATUTORY BASES

ARTICLE III

Liability and Compensation

Second: Section 302(b) of the Act, 77 P.S. section 462

Any employer who permits the entry upon premises occupied by him or under his control of a laborer or an assistant hired by an employee or contractor, for the performance upon such premises of a part of such employer's regular business entrusted to that employee or contractor, shall be liable for the payment of compensation to such laborer or assistant unless such hiring employee or contractor, if primarily liable for the payment of such compensation, has secured the payment thereof as provided for in this act. Any employer or his insurer who shall become liable hereunder for such compensation may recover the amount thereof paid and any necessary expenses from another person if the latter is primarily liable therefor.

For the purposes of this subsection(b), the term "contractor" shall have the meaning ascribed in section 105 of the Act.



Section 105 of the Act, 77 P.S. section 25

The term "contractor" . . . shall not include a contractor engaged in an independent business, other than that of supplying laborers or assistants, in which he serves persons other than the employer in whose service the injury occurs, but shall include a sub-contractor to whom a principal contractor has sublet any part of the work which such principal contractor has undertaken. Section 105 excludes independent contractors but includes businesses that supply workers to an entity.



CASE PRECEDENT

“Landmark” STATUTORY EMPLOYER CASE

McDonald v. Levinson Steel Co., 302 Pa. 287, 153 A.424 (1930) (decided under section 302(b))

- To establish a statutory employer, the following 5 elements must be met:
 - (1) An employer who is under contract with an owner or one in the position of an owner;
 - (2) Premises occupied by or under the control of such employer;
 - (3) A subcontract made by such employer;
 - (4) Part of the employer’s regular business entrusted to such contractor; and
 - (5) An employee of such sub-contractor.
- The McDonald test used in both tort and WC administrative contexts.
- An owner of property cannot be a statutory employer. Also, there must be 2 entities identified as an owner and a general contractor.
- Claimants utilize sections 302(a) & (b) of the Act to show that a general contractor or other similarly-situated entity, is responsible for paying their compensation benefits when their real or immediate employer is uninsured for WC purposes.

LEADING CASE UNDER LESSER KNOWN & LATER PROMULGATED SECTION 302(a) of ACT

Six L's Packing Co. v. WCAB (Williamson), 44 A.3d 1148 (Pa. 2012)

- Tomato processing center/farm was statutory employer of truck driver who was employed by a trucking company hired to transport tomatoes from processing center/farm to another location.
- Putative employer need not be in control of any premises to be liable for payment of compensation under section 302(a) of the Act.
- The owner of property exclusion of Section 302(b) of the Act does not apply to Section 302(a) of the Act.

Holding in **Six L's** followed in *Zwick v. WCAB (Popchocoj)*, 106 A.3d 251 (Pa. Commw. 2014)

- Court found real estate investor/agent/entrepreneur was statutory employer of one of his contractor's employees.
- The court rejected argument that Section 302(b) should have been applied rather than 302(a). Court found in a construction setting that criteria of either Section 302(a) or 302(b) must be met to show statutory employer liability. Section 302(a) applied because Zwick was in the business of rehabilitating properties for resale and the construction work that Claimant performed was a regular part of Zwick's business.

Holding in **Six L's** distinguished in *Saladworks, LLC v. WCAB (Gaudio)*, 124 A.3d 790 (Pa. Commw. 2015), appeal granted, 135 A.3d 1010 (Pa. 2016) and appeal dismissed as improvidently granted, 154 A.3d 1270 (Pa. 2016)

- Court found franchisor under the facts of the case not statutory employer.
- Claimant was injured while working for a restaurant which was a franchisee of Salad Works. The Court found franchisor, Salad Works' main business was selling franchises and not in the business of operating restaurants.

Dobransky v. EQT Production Company and Halliburton Energy Services, Inc., 273 A.3d 1133 2022 PA Super 61 (decided April 11, 2022)

- Claimant injured while delivering barite – an ingredient needed to make drilling mud – to a well site for Northwest, a trucking company.
- HESI was in business of providing well site services, which included making drilling mud for EQT.
- In a 4-to-3 decision, Court holds that HESI and EQT not statutory employers entitled to tort immunity.
- Claimant not involved in the removal, excavation or drilling of soil, rock or minerals as contemplated under Section 302(a).
- Claimant not engaged in a regular or recurrent part of HESI's or EQT's business under Section 302(b): “The fact that an entity contracts with a subcontractor to have materials delivered to it in order to conduct its business or trade does not mean that a part of that entity's business or trade is the transporting and/or shipping of those materials from one place to another.”

IMPLICATIONS FOR PUTATIVE STATUTORY EMPLOYERS

1) TARGET OF WC JOINDER PETITIONS

See 34 Pa. Code section 131.36 (relating to Joinder).

2) POSSIBLE
ENTANGLEMENT
WITH UEGF

See Article XVI of the Act (77 P.S. sections 2701-2708) and 34 Pa. Code sections 131.201 - 131.204

However, under current law, general contractors are entitled to tort immunity even when the subcontractor, which directly employed the injured worker provided workers' compensation insurance which paid benefits for the workers' injuries.

See Fonner v. Shandon, Inc., 555 Pa. 370, 724 A.2d 903 (1999).



Policy-wise, is the result in *Fonner* fair?

3) IF NOT A
STATUTORY
EMPLOYER,
POTENTIAL
TORT LIABILITY

PRACTICE HYPOTHETICALS

SCENARIO 1 | Background

Claimant, **Harry Hacker** is a **service technician** for Employer, **Great Value Data Solutions**, who has a contract with **Big City Charter School** to provide network support for its computer network. Great Value provides online and phone customer service support and onsite support for hardware such as installing and repairing computer workstations, Wi-Fi and server maintenance. Big City Charter School owns the building which houses the Charter School but does not have its own IT Department and relies on Great Value for its Network Administration and IT issues.

Great Value keeps its prices low by utilizing a remote workforce and paying them by 1099. Great Value does not carry WC insurance for its Service Techs. Service Techs work at home and provide onsite service as needed and regularly scheduled maintenance calls to Great Value's clients.

Harry Hacker is Great Value's top service tech. He is assigned to the Big City Account to provide online support and in person service. Harry handles most of the Big City work. He travels to Big City to perform server maintenance at least twice a month.

SCENARIO 1 | Incident

On Saturday, February 25, 2023, there was a blizzard which caused a power outage at Big City causing the server to crash. The server room suffered some floor damage, and power wires were left exposed on the floor in the server room.

Big City was aware of the damage to the service room but more concerned about getting the server up and running before school started on Monday. Big City called Great Value, requesting that Harry come out to get the server operational before school starts.

Harry travels to Big City to work on the server after the power outage. While working on the server, Harry trips over the exposed wires and injured his low back. Harry hires a lawyer to represent him.

HARRY HACKER CASE DISCUSSION

- What WC Petitions should be filed by Harry's Lawyer?
- Should the UEGF be brought in?
- Should a third-party lawsuit be filed?
- What defenses can Great Value raise?
- What defenses can Big City raise?
- What defenses can the UEGF raise?

SCENARIO 2 | Background

We Do Not Hire Employees, Inc. (**WDN**) bids and is awarded a large job from I'm Immune from Liability, LLC (**IIL**). IIL enters into a contract with WDN to do work on an apartment building that IIL owns. The contract indicates that WDN is to provide the workers for the job and IIL will provide the tools and supplies. Supervisor Bob works for IIL and is in charge of the worksite. He tells WDN and his workers what work needs to be done and supervises the work.

SCENARIO 2 | Incident

Claimant fell off of scaffolding while performing construction work. The fall was due to faulty scaffolding. Claimant suffered severe injuries. Claimant files a claim petition (without an SSN listed) against WDN.

WDN indicates that Claimant does work for other businesses and holds himself out as an independent contractor. WDN hires Claimant for various jobs, but does not have him sign an independent contractor agreement and does not verify if Claimant has his own liability insurance.

YOU
REPRESENT
WDN IN THE
CLAIM
PETITION
LITIGATION...

- What possible defenses does WDN have?
- What information are we missing or can we explore to build the case?
- Other issues that might arise from this litigation?

THANK YOU

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