Statutory References

820 Ill. Comp. Stat. Ann. 305/1

(a) The term "employer" as used in this Act means:

1. **The State and each county, city**, town, township, incorporated village, school district, body politic, or municipal corporation therein.

2. Every person, firm, public or private corporation, including hospitals, public service, eleemosynary, religious or charitable corporations or associations who has any person in service or under any contract for hire, express or implied, oral or written, and who is **engaged in any of the enterprises or businesses enumerated in Section 3 of this Act,** or who at or prior to the time of the accident to the employee for which compensation under this Act may be claimed, has in the manner provided in this Act **elected to become subject to the provisions of this Act, and who has not, prior to such accident**, effected a withdrawal of such election in the manner provided in this Act.

3. **Any one engaging in any business or enterprise referred to in subsections 1 and 2 of Section 3 of this Ac**t who undertakes to do any work enumerated therein, is liable to pay compensation to his own immediate employees in accordance with the provisions of this Act, **and in addition thereto if he directly or indirectly engages any contractor whether principal or sub-contractor to do any such work, he is liable to pay compensation to the employees of any such contractor or sub-contractor unless such contractor or sub-contractor has insured,** in any company or association authorized under the laws of this State to insure the liability to pay compensation under this Act, **or guaranteed his liability to pay such compensation**. With respect to any time limitation on the filing of claims provided by this Act, the timely filing of a claim against a contractor or subcontractor, as the case may be, shall be deemed to be a timely filing with respect to all persons upon whom liability is imposed by this paragraph.

In the event any such person pays compensation under this subsection **he may recover the amount thereof from the contractor or sub-contractor**, if any, and in the event the contractor pays compensation under this subsection he may recover the amount thereof from the sub-contractor, if any.

This subsection does not apply in any case where the accident occurs elsewhere than **on, in or about the immediate premises** on which the principal has contracted that the work be done.

4. Where an employer operating under and subject to the provisions of this **Act loans an employee to another such employer and such loaned employee sustains a compensable accidental injury in the employment of such borrowing employer and where such borrowing employer does not provide or pay the benefits or payments due such injured employee, such loaning employer is liable to provide or pay all benefits or payments due such employee under this Act and as to such employee the liability of such loaning and borrowing employers is joint and several,** provided that such loaning employer is in the

absence of agreement to the contrary entitled to receive from such borrowing employer full reimbursement for all sums paid or incurred pursuant to this paragraph together with reasonable attorneys' fees and expenses in any hearings before the Illinois Workers' Compensation Commission or in any action to secure such reimbursement. Where any benefit is provided or paid by such loaning employer the employee has the duty of rendering reasonable cooperation in any hearings, trials or proceedings in the case, including such proceedings for reimbursement.

Where an employee files an Application for Adjustment of Claim with the Illinois Workers' Compensation Commission alleging that his claim is covered by the provisions of the preceding paragraph, and joining both the alleged loaning and borrowing employers, they and each of them, upon written demand by the employee and within 7 days after receipt of such demand, shall have the duty of filing with the Illinois Workers' Compensation Commission a written admission or denial of the allegation that the claim is covered by the provisions of the preceding paragraph and in default of such filing or if any such denial be ultimately determined not to have been bona fide then the provisions of Paragraph K of Section 19 of this Act shall apply.

An employer whose business or enterprise or a substantial part thereof consists of hiring, procuring or furnishing employees to or for other employers operating under and subject to the provisions of this Act for the performance of the work of such other employers and who pays such employees their salary or wages notwithstanding that they are doing the work of such other employers **shall be deemed a loaning employer** within the meaning and provisions of this Section.

(b) The term "employee" as used in this Act means:

1. **Every person in the service of the State,** including members of the General Assembly, members of the Commerce Commission, members of the Illinois Workers' Compensation Commission, and all persons in the service of the University of Illinois, county, including deputy sheriffs and assistant state's attorneys, city, town, township, incorporated village or school district**, body politic**, or municipal corporation therein, whether by election, under appointment or contract of hire, express or implied, oral or written, including all members of the Illinois National Guard while on active duty in the service of the State, and all probation personnel of the Juvenile Court appointed pursuant to Article VI of the Juvenile Court Act of 1987,[1] and including any official of the State, any county, city, town, township, incorporated village, school district, body politic or municipal corporation therein **except** any duly appointed member of a **police department in any city whose population exceeds 500,000** according to the last Federal or State census, and except any member of a fire insurance patrol maintained by a board of underwriters in this State. **A duly appointed member of a fire department in any city, the population of which exceeds 500,000 according to the last federal or State census, is an employee under this Act only with respect to claims brought under paragraph (c) of Section 8.**

One employed by a contractor who has contracted with the State, or a county, city, town, township, incorporated village, school district, body politic or municipal corporation therein, through its representatives, **is not considered as an employee of the State**, county, city, town, township, incorporated village, school district, body politic or municipal corporation which made the contract.

2. Every person in the service of another under any contract of hire, express or implied, oral or written, including persons whose employment is outside of the State of Illinois where the **contract of hire is made within the State of Illinois, persons whose employment results in fatal or non-fatal injuries within the State of Illinois where the contract of hire is made outside of the State of Illinois, and persons whose employment is principally localized within the State** of Illinois, regardless of the place of the accident or the place where the contract of hire was made, and including **aliens, and minors** who, for the purpose of this Act are considered the same and have the same power to contract, receive payments and give quittances therefor, as adult employees.

3. **Every sole proprietor and every partner of a business may elect to be covered by this Act.**

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However, **any employer may elect to provide and pay compensation to any employee** other than those engaged in the usual course of the trade, business, profession or occupation of the employer **by complying with Sections 2 and 4 of this Act.** …

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820 Ill. Comp. Stat. Ann. 305/2

(a) Election by any employer to provide and pay compensation according to the provisions of this Act shall be made by the employer filing notice of such election with the Commission, or by insuring his liability to pay compensation under this Act in some insurance carrier authorized, licensed or permitted to do such insurance business in this State.

820 Ill. Comp. Stat. Ann. 305/3

§ 3. The provisions of this Act hereinafter following shall **apply automatically** and without election to the State, county, city, town, township, incorporated village or school district, body politic or municipal corporation, and to **all employers** and all their employees, engaged in any department of the following enterprises or businesses which are declared to be extra hazardous, namely:

1. **The erection, maintaining, removing, remodeling, altering or demolishing of any structure.**
2. **Construction**, excavating or electrical work.
3. **Carriage by land**, water or aerial service and loading or unloading in connection therewith, including the distribution of any commodity by horsedrawn or motor vehicle where the employer employs more than 2 employees in the enterprise or business.
4. The operation of any **warehouse** or general or terminal storehouses.
5. **Mining**, surface mining or quarrying.

6. Any enterprise in which **explosive** materials are manufactured, handled or used in dangerous quantities.
7. In any business or enterprise, wherein **molten metal, or explosive or injurious gases, dusts or vapors, or inflammable vapors, dusts or fluids**, corrosive acids, or atomic radiation are manufactured, used, generated, stored or conveyed.
8. Any enterprise in which **sharp edged cutting tools**, grinders or implements are used, including all enterprises which buy, sell or handle junk and salvage, demolish or reconstruct machinery.
9. In any enterprise in which **statutory or municipal** ordinance regulations are now or shall hereafter be imposed for the **regulating, guarding, use or the placing of machinery or appliances or for the protection and safeguarding** of the employees or the public therein; each of which occupations, enterprises or businesses are hereby declared to be extra hazardous.
10. Any enterprise, business or work in connection with the laying out or improvement of **subdivisions of tract**s of land.
11. Any enterprise for the **treatment of cross-ties**, switch-ties, telegraph poles, timber or other wood with creosote or other preservatives.
12. Establishments open to the general public wherein **alcoholic beverages are sold** to the general public for consumption on the premises.
13. The operation of any **public beauty shop** wherein chemicals, solutions, or heated instruments or objects are used or applied by any employee in the dressing, treatment or waving of human hair.
14. Any business or enterprise **serving food** to the public for consumption on the premises wherein any employee as a substantial part of the employee's work uses handcutting instruments or slicing machines or other devices for the cutting of meat or other food or wherein any employee is in the hazard of being scalded or burned by hot grease, hot water, hot foods, or other hot fluids, substances or objects.
15. Any business or enterprise in which electric, gasoline or other **power driven equipme**nt is used in the operation thereof.
16. Any business or enterprise in which **goods, wares or merchandise are produced**, manufactured or fabricated.
17. (a) Any business or enterprise in which goods, wares or merchandise are sold or in which services are rendered to the public at large, provided **that this paragraph shall not apply to such business or enterprise unless the annual payroll during the year next preceding the date of injury shall be in excess of $1,000.**
(b) The **corporate officers** of any domestic or foreign corporation employed by the corporation **may elect to withdraw** themselves as individuals from the operation of this Act. Upon an election by the corporate officers to withdraw, written notice shall be provided to the insurance carrier of such election to withdraw, which election shall be effective upon receipt by the insurance carrier of such written notice. A corporate officer who thereafter elects to resume coverage under the Act as an individual shall provide written notice of such election to the insurance carrier which election shall be effective upon receipt by the insurance carrier of such written notice. For the purpose of this paragraph, a “corporate officer” is defined as a bona fide President, Vice President, Secretary or Treasurer of a corporation who voluntarily elects to withdraw.

18. On and after July 1, 1980, but not before, any **household or residence wherein domestic workers are employed for a total of 40 or more hours per week** for a period of 13 or more weeks during a calendar year.
19**. Nothing contained in this Act shall be construed to apply to any agricultural enterprise, including aquaculture, employing less than 400 working days** of agricultural or aquacultural labor per quarter during the preceding calendar year, exclusive of working hours of the employer's spouse and other members of his or her immediate family residing with him or her.
20. Nothing contained in this Act shall be construed to apply to any sole proprietor or partner or member of a limited liability company who elects not to provide and pay compensation for accidental injuries sustained by himself, arising out of and in the course of the employment according to the provisions of this Act.

Case Citations

Chicago Hous. Auth. v. Indus. Comm'n, 240 Ill. App. 3d 820, 822, 608 N.E.2d 385, 387 (1992)

The Act defines an employee as "[e]very person in the service of another under any contract of hire, express or implied, oral or written * * *." (Ill.Rev.Stat.1989, ch. 48, par. 138.1(b)(2).) Consistent with the philosophy of the Act, which assumes that a worker is gainfully employed at the time of his injury, it is generally recognized that **a true employer/employee relationship does not exist in the absence of the payment or expected payment of consideration in some form by the employer to the employee. (*Board of Education v. Industrial Comm'n* (1972), 53 Ill.2d 167, 290 N.E.2d 247.) Although the definition of "employee" contained in the Act is to be broadly construed, there can be no employer/employee relationship and therefore no liability under the Act in the absence of a contract for hire, express or implied.** *Crepps v. Industrial Comm'n* (1949), 402 Ill. 606, 85 N.E.2d 5.

234 No rigid rule of law governs the determination of whether an employer/employee relationship exists and that determination depends on the facts of the particular case. (*Ragler Motor Sales v. Industrial Comm'n* (1982), 93 Ill.2d 66, 66 Ill.Dec. 342, 442 N.E.2d 903.) No single fact controls and such factors as **the right to control the manner in which the work is done, the method of payment, the right to discharge, the skill required and work done, and the furnishing of tools, material and equipment must be considered.** (*Village of Creve Coeur v. Industrial Comm'n* (1965), 32 Ill.2d 430, 206 N.E.2d 706.) The findings of the Commission will not be disturbed on appeal unless they are contrary to the manifest weight of the evidence. *Hebeler v. Industrial Comm'n* (1991), 207 Ill.App.3d 391, 152 Ill.Dec. 353, 565 N.E.2d 1035.

Ware v. Indus. Comm'n, 318 Ill. App. 3d 1117, 1122–23, 743 N.E.2d 579, 583 (2000)

No rigid rule of law exists regarding whether a worker is an employee or an independent contractor. *Area Transportation Co. v. Industrial Comm'n,* 123 Ill.App.3d 1096, 1099, 80 Ill.Dec. 421, 465 N.E.2d 533 (1984). Rather, courts have articulated a number of factors to consider in making this determination. **The single most important factor is whether the purported employer has a right to control the actions of the employee. *Bauer v. Industrial Comm'n,* 51 Ill.2d 169, 172, 282 N.E.2d 448 (1972). Also of great significance is the nature of the work performed by the alleged employee in relation to the general business of the employer**. *Ragler Motor Sales v. Industrial Comm'n,* 93 Ill.2d 66, 71, 66 Ill.Dec. 342, 442 N.E.2d 903 (1982); *Peesel v. Industrial Comm'n,* 224 Ill.App.3d 711, 716, 166 Ill.Dec. 752, 586 N.E.2d 710 (1992). Additional factors to consider are the **method of payment, the right to discharge, the skill the work requires, which party provides the needed instrumentalities, and whether income tax has been withheld.** *Wenholdt v. Industrial Comm'n,* 95 Ill.2d 76, 80–81, 69 Ill.Dec. 187, 447 N.E.2d 404 (1983). Finally, a factor of lesser weight is the label the parties place upon their relationship. *Earley,* 197 Ill.App.3d at 317, 143 Ill.Dec. 126, 553 N.E.2d 1112. The term "employee," for purposes of the Act, should be broadly construed. *Chicago Housing Authority v. Industrial Comm'n,* 240 Ill.App.3d 820, 822, 181 Ill.Dec. 312, 608 N.E.2d 385 (1992).

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Superior exercised substantial control over Ware's activities. It forbade him from carrying passengers. It required him to inspect his assigned tank trailer prior to starting a trip. The lease also provided that the tank be cleaned when Superior provided information as to the necessity of cleaning and designated the location where the cleaning was to occur. It instructed him regarding what type of fuel to buy, where to park, and how to inspect and maintain equipment during cold weather. Superior directed Ware to remove hoses from his trailer and place them on a cleaning rack at the end of his shift. Superior's dispatchers issued travel orders indicating what his load was, what equipment he needed, where he was going, and what time to be there. When Ware was carrying hazardous cargo, Superior would sometimes direct the route he was to follow as well. Superior required him to attend safety meetings, wear a uniform, shave, and display the Shell logo on his tractor while he was working in the fleet dedicated to serving Shell. When not dedicated to Shell, Ware was required to display Superior's logo on his tractor. If an accident occurred, Ware was instructed to contact Superior. Superior restricted the number of consecutive hours Ware could drive. Finally, Superior required Ware to pass a federally mandated physical. Results of the examination were sent directly to Superior. This extensive list of circumstances where Superior would direct Ware's behavior, coupled with Ware's compliance, is strong evidence that Superior had the right to control Ware's activities.

Roberson v. Indus. Comm'n (P.I. & I. Motor Exp., Inc.), 225 Ill. 2d 159, 175, 866 N.E.2d 191, 200 (2007)

we have listed various factors that help determine when a person is an employee: whether the employer may control the manner in which the person performs the work**; whether the employer dictates the person's schedule; whether the employer pays the person hourly**; whether the employer withholds income and social security taxes from the person's compensation; **whether the employer may discharge the person at will**; and whether the employer supplies the person with materials and equipment

BORROWED LOANED EMPLOYEE

A. J. Johnson Paving Co. v. Indus. Comm'n, 82 Ill. 2d 341, 346–48, 412 N.E.2d 477, 480–81 (1980)

An employee in the general employment of one person may be loaned to another for the performance of special *347 work and become the employee of the person to whom he is loaned, while performing the special service. (See Saldana v. Wirtz Cartage Co. (1978), 74 Ill.2d 379, 24 Ill.Dec. 523, 385 N.E.2d 664.) Whether such a transfer of employment occurs depends on whether the special or borrowing employer has the right to control the employee with respect to the work performed. (See 56 C.J.S. Master and Servant sec. 2(d)(2) (1948).) As stated in Saldana, "The main criterion for determining when a worker becomes a loaned employee is whether the special employer has control of the employee's services." 74 Ill.2d 379, 389, 24 Ill.Dec. 523, 527, 385 N.E.2d 664, 668

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The inquiry required for the determination of the existence of the loaned-employee status is, therefore, two-fold: (1) whether the special employer, Johnson, had the right to direct and control the manner in which claimant performed the work; and (2) whether there existed a contract of hire between claimant and Johnson. The existence of the loaned-servant situation is generally a question of fact to be determined by the Industrial Commission.

Prodanic v. Grossinger City Autocorp, Inc., 2012 IL App (1st) 110993, ¶¶ 16-17, 975 N.E.2d **658, 663–64**

Our supreme court has found that the following factors support a determination that the **borrowing employer had the right to control and direct the manner in which the employee performed the work: (1) the employee worked the same hours as**

the borrowing employer; (2) the employee received instruction from the borrowing employer's foreman and was assisted by the borrowing employer's employees; (3) the loaning employer's supervisors were not present; (4) the borrowing employer was permitted to tell the employee when to start and stop working; and (5) the loaning employer relinquished control of its equipment to the borrowing employer.

Holten v. Syncreon N. Am., Inc., 2019 IL App (2d) 180537, ¶¶ 33-34, 129 N.E.3d 728, 737

the statute further specifies that the **liability of the borrowing and loaning employers is joint and severa**l and that the loaning employer is, "in the absence of [an] agreement to the contrary," entitled to reimbursement from the borrowing employer "for all sums paid or incurred pursuant to this paragraph," in addition to the specified attorney fees and expenses. *Id.*

6¶ 34 Thus, "regardless of which of the two employers pays the workers[']compensation benefits**, the exclusivity provision of the Act immunizes both the borrowing employer and the lending employer from further claims**." *Illinois Insurance Guaranty Fund v. Virginia Surety Co.*, 2012 IL App (1st) 113758, ¶ 19, 365 Ill.Dec. 899, 979 N.E.2d 503. The legislature "did not require both a lending employer and borrowing employer to procure identical coverage for the same employees." *Id.*

TEMPORARY AGENCY EMPLOYMENT

Falge v. Lindoo Installations, Inc., 2017 IL App (2d) 160242, ¶ 20, 74 N.E.3d 520, 526–27

In *Chaney v. Yetter Manufacturing Co.*, 315 Ill.App.3d 823, 248 Ill.Dec. 737, 734 N.E.2d 1028 (2000), the plaintiff worked for a temporary agency. **The temporary agency handled its employees' payroll, tax withholding and reporting, and insurance, and it provided workers' compensation coverage for its employees**. *Id*. at 825, 248 Ill.Dec. 737, 734 N.E.2d 1028. When the plaintiff arrived at the defendant's facility, the defendant supervised *527 **60 and directed her work activities. *Id*. at 829, 248 Ill.Dec. 737, 734 N.E.2d 1028. **The defendant told her to perform specific tasks, and no one from the temporary agency was involved with or consulted concerning any task she performed while working at the defendant's facility. *Id.* The defendant could not discharge her from her employment at the temporary agency, but it could dismiss her from service at its facility**. *Id*. The appellate court affirmed summary judgment in favor of the defendant, finding that the defendant controlled the plaintiff while she was working at its facility. *Id*. at 829-30, 248 Ill.Dec. 737, 734 N.E.2d 1028. The court held that **the defendant's right to dismiss the plaintiff from service at its**

facility and to send her back to the temporary agency was sufficient to satisfy the discharge element of the control test. *Id.* The court also found that the plaintiff impliedly agreed to the borrowed-employee relationship where there was no dispute that she knew she was working for the defendant but through the temporary agency. *Id*.

JOINT EMPLOYER

Kay v. Centegra Health Sys., 2015 IL App (2d) 131187, ¶ 11, 40 N.E.3d 152, 156

Background: Medical lab technician who worked in laboratory at hospital brought negligence action against, among others, health system that operated hospital arising out of injuries she sustained when she tripped over a cable in the laboratory. The Circuit Court, McHenry County, Thomas A. Meyer, J., awarded summary judgment to health system on the basis of workers' compensation immunity. Technician appealed.

Holdings: The Appellate Court, McLaren, J., held that:

1 health system was the joint employer, with hospital, of technician, and

2 health system provided workers' compensation benefits to technician.

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A "joint employee" relationship may exist where two employers share control of the employee and both benefit from the work; in such a case, who hired the employee and paid her salary is a key factor. *Schmidt v. Milburn Brothers., Inc.,* 296 Ill.App.3d 260, 267, 230 Ill.Dec. 655, 694 N.E.2d 624 (1998). In addition, when two private, independently organized entities are involved as potential joint employers, the trier of fact must also consider the separate corporate existence of each. See *id.* at 266, 230 Ill.Dec. 655, 694 N.E.2d 624.

VOLUNTEER

Pearson v. Indus. Comm'n, 318 Ill. App. 3d 932, 936, 743 N.E.2d 685, 687 (2001)

In this case there is no dispute, the claimant neither received nor expected payment for his services in assisting the District's firemen. As the claimant testified, he provided his

services purely out of concern for his neighbors and the community. The record in this case reveals that the Commission did not apply an improper standard to determine whether the claimant was an employee of the District at the time of his injury, and its determination that he was not the District's employee is not against the manifest weight of the evidence. Further, the claimant's reliance upon the Illinois Supreme Court's decision in *Village of Creve Coeur v. Industrial Comm'n*, 32 Ill.2d 430, 206 N.E.2d 706 (1965), in support of his contention that an employer/employee relationship existed between himself and the District is misplaced. Unlike the circumstances present in this case, the injured volunteer fireman who was the claimant in *Village of Creve Coeur* was compensated for his services, a fact which the supreme court specifically noted in its decision. *Village of Creve Coeur*, 32 Ill.2d at 433, 206 N.E.2d 706.

WHO GETS IMMUNITY

Laffoon v. Bell & Zoller Coal Co., 65 Ill. 2d 437, 446–47, 359 N.E.2d 125, 129–30 (1976)

Employees of uninsured contractor and subcontractors who had recovered workmen's compensation from, respectively, owner of premises and general contractors brought actions against the same owner and general contractors under the Structural Work Act.***. The Supreme Court, Kluczynski, J., held **that exclusive remedy provision of the Workmen's Compensation Act confers immunity on employers only from common law or statutory actions for damages by their immediate employees, and thus did not preclude actions under the Structural Work Act against owner of premises and general contractors by, respectively, employee of contractor and employees of subcontractors, though the defendants had previously paid compensation to plaintiffs because the immediate employers were uninsured.**

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As heretofore noted, the purpose of the Workmen's Compensation Act is to afford employees financial protection when their earning power is temporarily diminished or terminated due to employment injuries. It was the obvious intent of the legislature in enacting section 1(a)(3) to ensure this purpose was carried out when the employer-subcontractor cannot fulfill this obligation. It was logical and reasonable to impose the liability for compensation benefits upon the general contractor, because he was in a position to hire subcontractors who possessed the necessary insurance. To bestow immunity upon the general contractors would reward those employing subcontractors who have no workmen's compensation coverage but yet are bound by the provisions of the Workmen's Compensation Act; and it would penalize those general contractors who, mindful of the purpose and spirit of said Act, only employ insured subcontractors.

**130 ***720 23 It is the duty of this court to construe acts of the legislature so as to uphold their validity and constitutionality if it can reasonably be done, and if their constitutionality is doubtful, to resolve that doubt in favor of their validity. (*447 Illinois Crime Investigating Com. v. Buccieri, 36 Ill.2d 556, 561, 224 N.E.2d 236.) Accordingly, we must interpret section 5(a) as conferring immunity upon employers only from common law or statutory actions for damages by their immediate employees. To hold otherwise in light of the present factual situations would be violative of the injured employee's right to due process and equal protection of the laws.

Munoz v. Bulley & Andrews, LLC, 2022 IL 127067

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Supreme Court of Illinois.

Donovan MUNOZ, Appellant,

v.

BULLEY & ANDREWS, LLC, Appellee.

Opinion filed January 21, 2022.

Synopsis

Background: Employee of general contractor's subsidiary, which served as subcontractor for construction project, brought personal injury action against general contractor after general contractor paid workers' compensation benefits for employee's injury. The Circuit Court, Cook County, Daniel T. Gillespie, J., 2019 WL 11851850, dismissed. Employee appealed. The Appellate Court, 2021 WL 606772, affirmed. Employee's petition for leave to appeal was allowed.

Holding: The Supreme Court, Carter, J., held that general contractor was not entitled to immunity under exclusive remedy provisions of Workers' Compensation Act from personal injury suit brought by subsidiary's employee.

Reversed and remanded.

¶ 35 **Section 5(a) of the Act includes no category granting nonemployers of the injured worker the ability to acquire immunity by either paying workers' compensation insurance premiums on behalf of the injured worker's direct employer or compensation benefits directly, as Bulley & Andrews did here. Nor does the Act make any provision for an entity**

that is legally distinct from the immediate employer to insulate itself against liability for its negligence by paying workers' compensation insurance premiums or benefits on behalf of the immediate employer of an injured worker. See *Burge v. Exelon Generation Co.*, 2015 IL App (2d) 141090, ¶ 14, 395 Ill.Dec. 71, 37 N.E.3d 907. To recognize a means by which immunity may be purchased by a general contractor who is not the injured worker's immediate employer would be contrary to the intended purpose of the Act. *Id.*

INDEPENDENT CONTRACTOR

Esquinca v. Illinois Workers' Compensation Com'n, 2016 IL App (1st) 150706WC, 51 N.E.3d 5.

Claimant filed an application for adjustment of claim seeking benefits for a low back injury which he allegedly sustained while working for his employer, Romar Transportation Systems. The arbitrator found that claimant was an independent contractor, and not an employee of the employer, at the time he was injured and denied benefits. The commission and Circuit Court of Cook County affirmed. Petitioner then appealed to the Illinois Appellate Court.

The employer was a transportation company engaged in the business of warehousing, yard storage, truck brokering and freight transport by rail and trucking. Some of the employer's drivers are employees of the company and some are "owner-operators" that the employer hired as independent contractors. Claimant, who owned his own truck, was delivering loads for the employer at the time of his injury.

For purposes of the workers' compensation act, the term employee should be interpreted broadly. There is no single factor that is determinative. The Supreme Court has identified a number of factors to assist in determining whether a person is an employee, including (1) whether the employer may control the manner in which the person performs the work, (2) whether the employer dictates the person's schedule, (3) whether the employer compensates the person on an hourly basis, (4) whether the employer withholds income and social security taxes from the person's compensation, (5) whether the employer may discharge the person at will, and (6) whether the employer supplies the person with materials and equipment. The Court stated that the right to control the manner in which a person perform the work is the most important factor. The nature of the claimant's work in relation to the employer's business is also an important consideration.

The Court, in this matter, found that claimant was acting as an independent contractor and not an employee. The Court noted the evidence showed that claimant owned his own truck, paid for insurance and maintenance costs, the trucking company did not tell claimant what route to take

when making deliveries and the company did not impose a schedule other than an arrival time. The Court further found that the expiration of the driver's two-year independent contractor agreement did not cause the driver to become an employee as a matter of law, and thus, did not make the driver eligible for benefits under the Workers' Compensation Act. This was due to the fact that the parties continued to act as if the terms of the independent contractor agreement remained in effect.

Doe v. Lyft, Inc., 2020 IL App (1st) 191328, 176 N.E.3d 863, appeal allowed, 163 N.E.3d 713 (Ill.2021).

A customer brought an action against ridesharing company, Lyft, for vicarious liability, based on intentional tort claims against the company's driver after he sexually assaulted her in his vehicle. The Circuit Court granted the company's motion to dismiss. The customer appealed. The Appellate Court held that the Transportation Network Providers Act exempted the company from common carrier liabilities, the exemption was rationally related to legitimate state interest of fostering competition in the transportation services market and increasing transportation options for consumers, the Act did not arbitrarily distinguish between victims of sexual assault by taxicab drivers versus ridesharing drivers, and enrolled-bill doctrine precluded customer's claim that passage of the Act violated the three-readings rule of the Illinois Constitution.

The Court noted that under the doctrine of respondeat superior, a principal or employer is generally subject to vicarious liability for the tortious conduct of its agent or employee only if the conduct fell within the scope of the agency or employment. There is a provision of the Transportation Network Providers Act exempting transportation network companies from the common carrier status applicable to traditional taxicabs. The Court found this to be rationally related to the legitimate state interest of fostering competition in the transportation services market and increasing transportation options for consumers. Therefore, the Act did not violate the Illinois Constitution. The Court noted that, unlike traditional taxicab services, the TNC business model depended on a large pool of non-professional drivers, TNC's did not own or control vehicles used by TNC drivers, the Act requires drivers to provide customers with his name, picture and license plate number before entering the vehicle and TC's could not accept customers by street hail.

The Illinois Supreme Court has now allowed the petition for leave to appeal. The petitioner asks the Illinois Supreme Court to determine whether ride share companies such as Uber and Lyft may be held vicariously liable for the tortious conduct of their drivers against their passengers in the same manner as other common carriers or whether they are immune from such heightened standards under the Transportation Network Providers Act.

Olivares v. Uber Technologies, Inc., 2017 WL 3008278

Plaintiff filed a complaint against Uber for violation of the Illinois Wage Payment and Collection Act (IWPCA), Illinois Minimum Wage Law (IMWL), and Fair Labor Standards Act (FLSA). Plaintiff brought the claim on behalf of himself and an Illinois class, who were defined as all individuals who are or previously employed by Uber in Illinois who were classified as independent contractors at any time. Plaintiff contended that he and all other drivers were not independent contractors and should be classified as non-exempt hourly employees. Plaintiff asserted that Uber violated both federal and state laws by not providing drivers with salaries that meet minimum wage requirements or overtime pay.

Plaintiff voluntarily entered into a valid and enforceable arbitration agreement with Raiser, LLC, Uber's wholly-owned subsidiary. Uber then subsequently revised the agreement, including an arbitration provision, delegation provision and opt out provision. Petitioner voluntarily entered into the revised agreement and did not opt out of the arbitration provision.

Defendant asked the court to compel arbitration and dismiss the complaint because there was a valid, enforceable arbitration agreement and the NLRA does not apply since plaintiff was an independent contractor, not an employee. The Court held the Arbitration Agreement was valid. It noted that it is essential to resolve whether plaintiff is an independent contractor or an employee. However, the Court held that question is for the arbitrator and declined to weigh in on the issue.

O'Malley v. Udo, 2022 IL App (1st) 200007

Plaintiff appealed a trial court's determination that he was an independent contractor exempt from application of the Wage Act. The purpose of the Wage Act is to provide employees with a cause of action for the timely and complete payment of earned wages or final compensation. Plaintiff must show that he is owed wages by the employer pursuant to an employment agreement or contract. The trial court determined that no employment relationship existed as it believed petitioner declined employment and had preferred to establish a contractor relationship.

Section 2 of the Wage Act provides that "employee" includes any individual permitted to work by an employer in an occupation, but shall not include any individual: (1) who has been and will continue to be free from control and direction over the performance of his work; (2) who performs work which is either outside the usual course of business or is performed outside all of the places of business of the employer unless the employer is in the business of contracting with third parties for placement of employees; and (3) who is in an independently established trade, occupation,

profession or business. All three conditions must be satisfied for the independent contractor exemption to apply.

In this matter, plaintiff worked from his home office in Evanston. The Court stated that the mere fact that plaintiff performed work out of his home office is not enough to extend the place of business to his home office. If that were the test, the independent contractor exemption would be rendered meaningless because any place in which a worker performed an agreed-upon service, even in his own home or office, would become the place of business of the party who hired him.

The court found that petitioner was, in fact, an employee in this matter. The Court noted that plaintiff not only worked out of his home office, but also presented at roadshows on behalf of defendant and traveled to attend meetings with banks and potential clients of the company.

TRAVELING EMPLOYEE

Brettman v. Illinois Workers' Comp. Comm'n, 2021 IL App (1st) 210145WC-U.

This is a decision rendered on a case out of our firm. I actually wrote the brief with Mark. It was a positive decision, where the court held that petitioner was not considered a traveling employee at the time of her accident. Petitioner worked as the office administrator for her husband's company and worked out of her "home office." It was alleged that petitioner was working from the home office in the morning of the day of her accident. The evidence showed that she then drove to Walgreen's to pick up a prescription for a preexisting back condition at 10:14 a.m. The evidence also showed that she had a physical therapy appointment at Athletico scheduled at 11:00 a.m. After leaving Walgreen's, she was involved in a car accident and sustained severe head injuries, rendering her unable to testify at trial. As part of petitioner's normal work duties, she would often drive to a title company and a bank to obtain title records for construction projects, as well as deposit checks at the bank. Petitioner alleged that the purpose of her trip that day was for business as she was likely going to go to the title company or bank for work purposes. We argued that petitioner's actual purpose of the trip was to pick up her prescription and attend physical therapy and there was no evidence that she was engaged in any business at the time of the accident.

Petitioner essentially argued that she was engaged in a business errand at the time of the accident and therefore her injuries arose out of and in the course of her employment. The Court rejected this argument, noting that there was no evidence presented that petitioner was instructed by her employer to travel for any business-related purpose, that she was required to travel that morning for any business-related reason, or that she had any business-related appointments scheduled that

morning. The Court stated that the evidence did not establish that she did anything business-related after leaving her home office on the morning of the accident. There were additionally credibility issues in this matter, as petitioner's three witnesses, her husband, sister and friend, were deemed contradictory.

The Court noted that a traveling employee is one who is required to travel away from the employer's premises in order to perform his job. As a general rule, a traveling employee is held to be in the course of employment from the time he leaves home until he returns. Although a traveling employee who is injured while performing a personal errand may receive benefits, such an injury is compensable only if the personal errand is performed during the course of a business trip. When a traveling employee is injured on a trip that has both business and personal characteristics, whether an accidental injury arose out of and in the course of employment depends first upon the purpose of the trip taken. If the work creates the necessity for travel, the individual is considered an employee within the course of his employment, though he is serving at the same time some purpose of his own. However, if the work had no part in creating the necessity for travel, if the journey would have gone forward though the business errand had been dropped, and would have been canceled upon failure of the private purpose, then the travel and the risk associated with the travel is entirely personal and not compensable.

The court essentially determined that petitioner was traveling for purely personal reasons, the Walgreen's trip and physical therapy trip and there was no evidence that she was traveling for a business purpose. With the extensive rise of people working from home these days, this case could potentially be used as a framework for alleged injuries that occur while someone is "working" from home, but it cannot be shown whether the person is engaged in purely personal activities at the time of the injury.

ACCIDENT IN ANOTHER STATE

Long-Airdox Co. v. Indus. Comm'n, 128 Ill. App. 3d 334, 470 N.E.2d 1307 (1984).

Claimant, a resident of Missouri, was injured in a car accident in Illinois while working for respondent. Claimant applied for and received workers' compensation benefits in West Virginia. Petitioner then later filed an application for workers' compensation benefits in Illinois. Respondent filed a motion to dismiss the complaint based on a lack of jurisdiction. The arbitrator denied the motion and awarded claimant permanent disability benefits and a year of TTD benefits. The Commission and Circuit Court affirmed. On appeal, respondent argued that the benefits claimant previously received as a result of his claim in West Virginia constituted an election of remedies which now precluded him from recovering benefits in Illinois.

The Illinois Workers' Compensation Act provides that an employee who has a cause of action for an injury arising out of and in the course of his employment may elect to pursue his remedy in the state where injured or disabled, or in the state where the contract of hire is made, or in the State where the employment is principally localized. Claimant, in this matter, could choose to file his claim in any of the three forums. The Court stated that a claimant will be said to have chosen to pursue his remedy in a particular jurisdiction when (1) double compensation to the petitioner is threatened or suggested, or (2) the respondent has actually been misled by the petitioner's conduct, or (3) res judicata can be applied.

In applying the doctrine of election of remedies, the court considered whether there was a threat of double recovery. The court found that there was no threat of double recovery in this matter as the payments made by respondent in the West Virginia claim were credited against the award made by the arbitrator in Illinois.

With respect to the second factor, the respondent argued that it made a substantial change in position in reliance on claimant's intent to pursue benefits in West Virginia. However, respondent offered no evidence in support of its argument. The Court noted that the fact respondent's deductible in Illinois was lower than in West Virginia was irrelevant.

The Court further found that res judicata did not bar claimant's claim in Illinois because there was no final judgment in the West Virginia proceedings which would render the doctrine applicable. Therefore, claimant's actions were not sufficient under Illinois law to constitute an election of remedies and jurisdiction existed in Illinois.

Aureus Med. Grp. V. Illinois Workers' Comp. Comm'n, 2021 IL App (3d) 200201WC-U.

Respondent operated a healthcare staffing company and hired claimant to work a temporary assignment as an operating room nurse at Memorial Hospital in South Bend, Indiana. Claimant sustained injuries when she fell while working at the hospital in Indiana. Claimant filed her application in Illinois. Respondent argued that Illinois did not have jurisdiction over claimant's claim as the contract for hire contained a condition precedent sating the Indiana Board of Nursing had to provide claimant with her Indiana nursing license.

The Court stated that a claimant may pursue a workers' compensation claim in Illinois if: (1) the accident occurred in Illinois, (2) the claimant's employment was principally located in Illinois, or

(3) the contract for hire was made in Illinois. In this matter, claimant's injury occurred in Indiana, not Illinois. There was also no allegation that claimant's employment was principally located in Illinois. Therefore, Illinois could only exercise jurisdiction over the claim at issue of the contract for hire was made in Illinois. The test to determine whether a contract for hire was made within Illinois is whether the evidence is sufficient to support the commission's finding. The Commission, in determining that the last act necessary to give validity to claimant's contract for hire occurred in Illinois is when claimant signed the contract by typing in her name and transmitting it to respondent. The Appellate court stated that the commission's decision was not against the manifest weight of the evidence. The Court specifically noted that obtaining the Indiana nursing license was a condition subsequent, not condition precedent, to qualify for the assignment. The court stated that respondent's hiring of claimant and her placement in the assignment in Indiana were two separate and distinct events.

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