STATE OF GEORGIA WORKERS' COMPENSATION COMPENDIUM OF LAW

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Part One:

Definitions of Employer and Employee

Any individual, firm, association, or corporation engaged in any business that has three or more employees regularly in service in the same business within the State of Georgia is considered an "employer" subject to the Workers' Compensation Act. O.C.G.A. § 34-9-1(3); O.C.G.A. § 34-9-2(a)(2).

The Act defines an "employee" as any person in the service of another under any contract of hire, whether written or implied, whose employment is in the usual course of the trade, business, occupation, or profession of the employer. O.C.G.A. §34-9-1(2). Certain "employees" are excluded from coverage under the Act, including farm laborers, domestic servants, and railroad workers. O.C.G.A. § 34-9-1(2). Likewise, independent contractors are generally excluded from coverage. O.C.G.A. § 34-9-2(e). Whether a worker qualifies as an independent contractor or an employee usually hinges on whether the employer has the right to control the time, manner, methods, and means of the execution of the work or whether the worker is free of such control by the employer. *Hampton v. McCord,* 141 Ga. App. 97 (1977).

Georgia also provides a mechanism whereby the injured employee of a subcontractor may recover benefits from the principal or immediate contractor that hired the subcontractor. Such a principal or immediate contractor is considered the "statutory employer" of the employee. O.C.G.A. § 34-9-8. If the statutory employee's immediate employer is not subject to the Act (i.e. – it employs less than three employees), the employee may bring his initial claim directly against the statutory employer. Otherwise, he must first initiate his claim and proceed against his immediate employer for workers' compensation benefits, and the statutory employer has only secondary liability. O.C.G.A. § 34-9-8. Note, however, that for a principal contractor to qualify as a statutory employer, it must have at least three employees of its own and the injury must have occurred on the premises where the principal contractor has undertaken to execute work or which are otherwise under the principal contractor's control or management. *Bradshaw Enter. v. Glass*, 252 Ga. 429 (1984); O.C.G.A. § 34-9-8(d).

Compensable Injuries

For an injury to be compensable in Georgia, it must "arise out of" employment, and it must occur "in the course of" employment. O.C.G.A. § 34-9-1(4). The term "arising out of" refers to the causal connection between the work and the injury: An injury "arises out of" employment when a reasonable person, after considering the circumstances of the employment, would perceive a causal connection between the conditions under which the employee must work and the resulting injury. *Hennly v. Richardson*, 264 Ga. 355, 356 (1994). A injury arises "in the course" of employment when it occurs within the period of employment, at a place where the employee may be in performance of his duties and while he is fulfilling or doing something incidental to those duties. *Id.* The terms "arising out of" and "in the course of" are not synonymous, and both

requirements must be met before an injury to be compensable. *Mayor & Aldermen of Savannah v. Stevens*, 278 Ga. 166 (2004).

The Workers' Compensation Act's definition of an "injury" includes the work-related aggravation of a preexisting condition. O.C.G.A. § 34-9-1(4). There need not be a specific job-connected incident for a compensable aggravation injury to occur. To the contrary, if the employee's job duties are a contributing cause to the aggravation of his preexisting condition, the aggravation is a compensable injury. *Home Depot v. McCreary,* 306 Ga. App. 805, 811 (2010). An aggravation injury is, however, only compensable for so long as the aggravation of the preexisting condition continues to be the cause of the employee's disability, and once the aggravation has subsided, the employer is no longer responsible for the condition. O.C.G.A. § 34-9-1(4).

Cumulative trauma over time, which does not lend itself to identifying a specific incident or date as the onset of the injury, may also qualify as compensable injury. *D.W. Adcock, M.D., P.C. v. Adcock*, 257 Ga, App, 700, 702 (2002). Examples for such injuries include the gradual deterioration of an employee's back due to his work activities, the development of carpal tunnel syndrome, and the gradual development of severe eczema from repeated hand scrubbing. *See Id; Carey v. Travelers Ins. Co.*, 133 Ga. App. 657 (1975); *Southwire Co. v. Crapse*, 190 Ga. App. 383 (1989).

Excluded Injuries or Claims

An injury that results from a condition that is purely personal to the employee is referred to as an "idiopathic" injury. These injuries often arise in the context of an unexplained fall. For example, in *Chaparral Boats, Inc. v. Heath*, 269 Ga. App. 339 (2004), the employee hyperextended her knee while walking across her employer's premises to clock in for work. There was no evidence that the employee slipped, tripped, or fell or that she came into contact with any object, and the Court held that her knee injury was not compensable because it could have occurred regardless of where the employee was required to be located and it resulted from a risk (walking) to which she would have been equally exposed apart from her employment.

For an injury to arise out of employment, it must generally be caused by a risk "peculiar" to the employment in the sense that the risk was not equally shared by or common to the public at large. *Id.* Nevertheless, even where the cause of a fall is personal to the employee (such as a nonindustrial heart-attack, dizzy or epileptic spell, or any idiopathic condition), an injury that occurs in the process of the fall will be considered work-related and compensable where the fall is on a stairway or from a height or where the employee strikes some object specifically related to the work place, such as a work bench, machinery, or equipment. *Id.* at 347; *United States Casualty Co. v. Richardson*, 75 Ga. App. 496, 500 (1947).

Injuries are also excluded when they are due to the employee's willful misconduct, including intentionally self-inflicted injury, or growing out of an attempt to injure another, or for

the willful failure or refusal to use a safety appliance or perform a duty required by statute. O.C.G.A. § 34-9-17. However, mere violations of instructions, orders, rules, ordinances, and statutes, and doing of hazardous acts where danger is obvious, do not, without more, as a matter of law, constitute willful misconduct which precludes recovery of benefits; such violations or failures or refusals generally constitute mere negligence, and that negligence, however great, does not constitute willful misconduct or willful failure or refusal to perform duty required by statute and will not defeat recovery of compensation by employee or his dependents. *Roy v. Norman*, 261 Ga. 303 (1991).

With respect to intoxication/inebriation defenses, the presence of drugs or alcohol in an employee's blood after an accident does not automatically preclude recovery. O.C.G.A. § 34-9-17. If competent testing shows either a blood-alcohol content of 0.08 within three hours of an accident or any amount of drugs within eight hours of an accident, there is a rebuttable presumption that the drugs/alcohol caused the accident. The unjustified refusal to submit to a post-accident drug test also raises the rebuttable presumption. *Georgia Self-Insurers Guar. Trust Fund v. Thomas*, 269 Ga. 560 (1998). If the presumption arises, the burden shifts to the employee to overcome the presumption with clear, positive, and uncontradicted evidence that the accident was not proximately caused by the alcohol or drugs. *Lastinger v. Mill & Machinery, Inc.*, 236 Ga.App. 430 (1999).