Definitions of Employer, Employee and Independent Contractor

The Louisiana Workers Compensation Law applies to all employers regardless of the number of employees, and establishes a presumption that anyone rendering service for another in any trade, business or occupation is an employee. (R.S. 23:1035 and 23:1044) Certain classes of employees are excluded from coverage under the Act (R.S. 23:1037 – employees of railroads and vessels) but they can recover under federal law. The Act does not apply to private residential employees; an employee of a private unincorporated farm earning below a set amount and musicians and performers rendering services pursuant to a performance contract. (R.S. 23:1035 B). The Act does not apply to real estate brokers or licensed salesmen operating under a licensed broker (R.S. 23:1047) or a Landman operating under a lead broker landman. (R.S. 23:1048). Additional person are exempt from coverage under R.S. 23:1045 (members of the crew of an airplane engaged in dusting or spraying); R.S. 23:1046 (uncompensated officers and members of the board of directors of certain non-profit organization).

Any person paid wages to perform work that is part of the employer’s trade, business or occupation will be regarded as an “employee”. If that person is injured at work, he may seek compensation benefits from his employer and the workers’ compensation insurer. Undocumented workers are entitled to benefits under the Louisiana Workers Compensation Statute.

An “employment relationship” is determined based upon the following factors:

(1) right of control and supervision over the employee;
(2) selection and engagement of the worker;
(3) payment of wages and
(4) power of dismissal

Volunteers who are not paid wages for their services would generally not be considered an “employee” under the Compensation Statute, but there are some exceptions dependent upon the facts of a particular case. R.S. 23:1036 allows the State Fire Marshall to provide workers compensation coverage to volunteer members of fire companies.

An individual may be employed by more than one person or company and may seek compensation from any of his employers. Examples of multiple employer relationships include partnerships, joint employers and borrowed employees. The amount of benefit for which each employer is liable will be dependent upon the nature of the multiple employments.

R.S. 23:1021 (7) defines independent contractor:

(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 his
principal as to results of his 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 of 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 operation of a truck tractor or truck tractor trailer, including fueling, driving, connecting and disconnecting electrical lines and air hoses, hooking and unhooking trailers, and vehicle inspections are not manual labor within the meaning of this Chapter.

Compensable Conditions

The Louisiana Workers Compensation Statute is broad, compensating injuries arising from employment, but subject to exclusions of compensation set out in the Statute:

R.S. 23:1031

A. If an employee not otherwise eliminated from the benefits of this Chapter receives personal injury by accident arising out of and in the course of his employment, his employer shall pay compensation in the amounts, on the conditions, and to the person or persons hereinafter designated.

An “accident” is defined in the Statute to include:

R.S. 23:1021

As used in this Chapter, unless the context clearly indicates otherwise, the following terms shall be given the meaning ascribed to them in this Section:

(1) "Accident" means an unexpected or unforeseen actual, identifiable, precipitous event happening suddenly or violently, with or without human fault, and directly producing at the time objective findings of an injury which is more than simply a gradual deterioration or progressive degeneration.

There is a presumption that an employee’s disability resulted from the accident if before the accident the injured employee was in good health, but after the accident symptoms of disabling conditions manifested and continued. The presumption requires that there is sufficient medical evidence to show that there is a reasonable possibility of a causal connection between the accident and the condition or that the nature of the accident, when combined with other facts of the case, raises a natural inference of a causal connection. Miller v. Roger Miller Sand Inc. 94-1151 (La. 11/3-94), 646 So.2d 330.

A pre-existing condition does not bar recovery because the employer takes the employee as he finds him. Louisiana has a Second Injury Fund that encourages the employment of the handicapped and protects employers from exposure to greater liability. R.S. 23:1371 et seq.
R.S. 23:1031.1 provides for disability as a result of long-term or gradual exposure to conditions on the job, “Occupational Disease”:

A. Every employee who is disabled because of the contraction of an occupational disease as herein defined, or the dependent of an employee whose death is caused by an occupational disease, as herein defined, shall be entitled to the compensation provided in this Chapter the same as if said employee received personal injury by accident arising out of and in the course of his employment.

B. An occupational disease means only that disease or illness which is due to causes and conditions characteristic of and peculiar to the particular trade, occupation, process, or employment in which the employee is exposed to such disease. Occupational disease shall include injuries due to work-related carpal tunnel syndrome. Degenerative disc disease, spinal stenosis, arthritis of any type, mental illness, and heart-related or perivascular disease are specifically excluded from the classification of an occupational disease for the purpose of this Section.

D. Any occupational disease contracted by an employee while performing work for a particular employer in which he has been engaged for less than twelve months shall be presumed not to have been contracted in the course of and arising out of such employment, provided, however, that any such occupational disease so contracted within the twelve months' limitation as set out herein shall become compensable when the occupational disease shall have been proved to have been contracted during the course of the prior twelve months' employment by a preponderance of evidence.

E. All claims for disability arising from an occupational disease are barred unless the employee files a claim as provided in this Chapter within one year of the date that:
(1) The disease manifested itself.
(2) The employee is disabled from working as a result of the disease.
(3) The employee knows or has reasonable grounds to believe that the disease is occupationally related.

F. All claims for death arising from an occupational disease are barred unless the dependent or dependents as set out herein file a claim as provided in this Chapter within one year of the date of death of such employee or within one year of the date the claimant has reasonable grounds to believe that the death resulted from an occupational disease.

G. Compensation shall not be payable hereunder to an employee or his dependents on account of disability or death arising from disease suffered by an employee who, at the time of entering into the employment from which the disease is claimed to have resulted, shall have willfully and falsely represented himself as not having previously suffered from such disease.
H. The rights and remedies herein granted to an employee or his dependent on account of an occupational disease for which he is entitled to compensation under this Chapter shall be exclusive of all other rights and remedies of such employee, his personal representatives, dependents or relatives.

Excluded Injuries or Claims

“Mental Injury”

R.S. 23:1021 (8) defines “injury” and “personal injuries” and excludes certain “mental injury” from compensable injuries under the statute:

(8) (a) "Injury" and "personal injuries" include only injuries by violence to the physical structure of the body and such disease or infections as naturally result therefrom. These terms shall in no case be construed to include any other form of disease or derangement, however caused or contracted.

(b) Mental injury caused by mental stress. Mental injury or illness resulting from work-related stress shall not be considered a personal injury by accident arising out of and in the course of employment and is not compensable pursuant to this Chapter, unless the mental injury was the result of a sudden, unexpected, and extraordinary stress related to the employment and is demonstrated by clear and convincing evidence.

(c) Mental injury caused by physical injury. A mental injury or illness caused by a physical injury to the employee's body shall not be considered a personal injury by accident arising out of and in the course of employment and is not compensable pursuant to this Chapter unless it is demonstrated by clear and convincing evidence.

(d) No mental injury or illness shall be compensable under either Subparagraph (b) or (c) unless the mental injury or illness is diagnosed by a licensed psychiatrist or psychologist and the diagnosis of the condition meets the criteria as established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders presented by the American Psychiatric Association.

“Heart-related or perivascular injuries”

R.S. 23:1021 (8) Excludes certain heart-related or perivascular injuries:

(e) Heart-related or perivascular injuries. A heart-related or perivascular injury, illness, or death shall not be considered a personal injury by accident arising out
of and in the course of employment and is not compensable pursuant to this Chapter unless it is demonstrated by clear and convincing evidence that:

(i) The physical work stress was extraordinary and unusual in comparison to the stress or exertion experienced by the average employee in that occupation, and
(ii) The physical work stress or exertion, and not some other source of stress or preexisting condition, was the predominant and major cause of the heart-related or perivascular injury, illness, or death.

NOTE: Fireman are an exception; See R.S. 33:2581:

§2581. Development of heart and lung disease during employment in classified fire service; occupational disease

Any disease or infirmity of the heart or lungs which develops during a period of employment in the classified fire service in the state of Louisiana shall be classified as a disease or infirmity connected with employment. The employee affected, or his survivors, shall be entitled to all rights and benefits as granted by the laws of the state of Louisiana to which one suffering an occupational disease is entitled as service connected in the line of duty, regardless of whether the fireman is on duty at the time he is stricken with the disease or infirmity. Such disease or infirmity shall be presumed, prima facie, to have developed during employment and shall be presumed, prima facie, to have been caused by or to have resulted from the nature of the work performed whenever same is manifested at any time after the first five years of employment.

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