



STATE OF NEW YORK WORKERS' COMPENSATION COMPENDIUM OF LAW

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Revised 2015

PART ONE:

Definitions of Employer and Employee

An employer is defined as a “person, partnership, association, corporation, and the legal representative of a deceased employer, having one or more persons in employment, including the state, a municipal corporation, fire district or other political subdivision of the state.” N.Y. Work. Comp. § 2(3).

An employer-employee relationship is essential for recovery from a work accident. Whether there is such a relationship is a factual matter for the Workers’ Compensation Board to decide. *Fitzpatrick v. Holimont, Inc.*, 247 A.D.2d 715 (3rd Dept. 1988). An independent contractor is not an employee under the Workers’ Compensation Law. The key test to determine whether the claimant is an employee or an independent contractor is whether the alleged employer had control over the employee. To determine whether this kind of relationship exists is to determine whether the right to control is existent and the principal factors are (1) direct evidence of control, (2) method of payment, (3) furnishing of equipment, (4) the right of discharge, and (5) the nature of the work involved. *Matter of Winglovitz v. Agway, Inc.*, 246 A.D.2d 684, 685 (3rd Dept. 1998); *In re Claim of Gallagher*, 259 A.D.2d 853 (3rd Dept. 1999). The mere fact that a contract designated a party as an independent contractor is not dispositive. *In re Claim of Gallagher*, 259 A.D.2d 853 (3rd Dept. 1999).

There are twelve statutory exceptions to coverage that include licensed real estate brokers, certain taxicab drivers, babysitters, clergy members, and other classes of professionals. N.Y. Work. Comp. § 2. Inmates are not considered employees of the State of New York and therefore are not covered under the Workers’ Compensation Law. *Reid v. N.Y. State Dept. of Correctional Servs.*, 54 A.D.2d 83 (3rd Dept. 1976). The Workers’ Compensation Law specifically covers three classes of volunteers: volunteer workers for the State of New York, if approved by the head of a particular state department (N.Y. Work. Comp. § 3); volunteers approved by a social service official (N.Y. Work. Comp. § 3); and civil defense volunteers (N.Y. Work. Comp. Law §§ 300-328). However, under common law, casual volunteers are excluded from coverage. *Ferro v. Leopold Sinsheimer Estate, Inc.*, 256 N.Y. 398 (1931).

Compensable Injury

New York recognizes two main types of claims — accidents and occupational diseases. A compensable injury must “arise out of and in the course of employment.” N.Y. Work. Comp. Law §§ 2(7), 10(1). Under New York State law, there is a presumption that a claim for compensation, in absence of substantial evidence to the contrary, is compensable and falls within workers’ compensation. N.Y. Work. Comp., § 21(1). However, the claimant is still not totally relieved of the burden of showing that an injury was sustained in the course and arose from his employment. *See, Malacarne v. Yonkers Parking Authority*, 41 N.Y.2d 189, 193 (1976). For an injury to arise out of employment, it must flow “as a natural consequence of the employee’s duties.” *Lemon v. New York City Transit Auth.*, 72 N.Y.2d 324 (1988). The claimant must make an initial showing to the Board that there is a causal relationship between the accident and the claimant’s employment. For an accident to be compensable, there must be a reasonable nexus between the risk to which the claimant was exposed and the employment.

An employee can be compensated for a disease that is occupational in nature. N.Y. Work. Comp., §§ 3(2) and 37-48. The occupational disease must be the result of a distinctive feature of the kind of work performed by the claimant and others similarly employed, not an ailment caused by the peculiar place in which a particular claimant happens to work or caused by ordinary contact with a fellow employee. *Paider v. Park East Movers*, 19 N.Y.2d 373 (1967). For example, the Court of Appeals found that the claimed occupational disease was not compensable in *Goldberg v. 954 Marcy Corp.*, where the claimant was burned by an electric heater in the ticket booth at the movie theatre she worked at. 12 N.E.2d 331

(1938). The court noted that the hazard, the electric heater, was not something all cashiers or ticket sellers are normally exposed to. Of note, specifically in claims of occupational diseases, apportionment can be made against several employers who employed the claimant since the contraction of the disease. N.Y. Work. Comp. §44. The apportionment is set in proportion to the time the employee was employed by that employer. Id.

Some, but not all, psychological injuries are compensable. It has been held that undue or excessive work-related stress and anxiety may constitute an accident. *Matter of Snyder v. New York State Comm. For Human Rights*, 31 N.Y.2d 284. Workers' Compensation Law does not require a discrete, identifiable traumatic event for a stress or psychological claim to be compensable. *Rackley v. County of Rensselaer*, 141 A.D.2d 232 (3rd Dept. 1988). Further, the fact that the claimant was susceptible to the effects of work related stress does not, in and of itself, bar the claim. *Greene v. Charles Freihofer Baking Co.*, 180 A.D.2d 980 (1992). In addition to all of the ordinary requirements, stress claims also require the claimant to show that the stress he or she was under at work "constituted more than the usual irritations and differences to which all workers are generally subjected." *Kaliski v. Fairchild Republic Co.*, 151 A.D.2d 867 (3rd Dept. 1989).

Excluded Injuries or Claims

Mental stress claims are not allowed if the mental injury is a direct consequence of a lawful personnel decision involving a disciplinary action, work evaluation, job transfer, demotion, or termination taken in good faith by the employer. N.Y. Work. Comp. Law § 2(7). There is no liability for compensation when the injury is caused by the "willful intention of the injured employee to bring about the injury or death of himself or another." N.Y. Work. Comp. § 10 (1). Additionally, the injury is not compensable when the employee's intoxication is the sole cause of the accident; however, if the intoxication simply *contributes* to the accident, the injury may still be compensable. N.Y. Work. Comp. §10(1). Further, there is no liability for an injury sustained when voluntarily participating in an off-duty athletic activity, unless the employer (a) requires the employee to participate in such activity, (b) compensates the employee for participating in such activity, or (c) otherwise sponsors the activity. Id.

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