CHAPTER 1

General Provisions

ARTICLE 1

Short title; Definitions

**SECTION 42‑1‑10.** Short title.

This title shall be known and cited as “The South Carolina Workers’ Compensation Law”. All references in this title to “workmen’s compensation” shall mean “workers’ compensation”; provided, however, all state agencies and departments and all political subdivisions of the State must exhaust the use of all current forms, stationery, and any other printed material before using, printing, or preparing any new forms, stationery, or printed material reflecting the change effected by this section.

HISTORY: 1962 Code Section 72‑1; 1952 Code Section 72‑1; 1942 Code Section 7035‑1; 1936 (39) 1231; 1982 Act No. 303.

CROSS REFERENCES

Administration of an adoption program by the department and establishment of an adoption unit within the department, see Section 63‑9‑1330.

Deputy enforcement officers of Natural Resources Enforcement Division not employees entitled to coverage or benefits provided in Title 42, see Section 50‑3‑315.

Limitation on waiver of governmental immunity from tort liability where the claim is covered by the South Carolina Workers’ Compensation Act, see Section 15‑78‑60.

RESEARCH REFERENCES

ALR Library

27 ALR 7th 2 , Status as Alter Ego of Employer for Purposes of Exclusive Remedy Rule Barring Third‑Party Action Under Workers’ Compensation Statutes.

11 ALR 6th 447 , Liability of Employer, Supervisor, or Manager for Intentionally or Recklessly Causing Employee Emotional Distress‑Age Discrimination.

83 ALR 5th 103 , Right to Workers’ Compensation for Emotional Distress or Like Injury Suffered by Claimant as Result of Sudden Stimuli Involving Nonpersonnel Action‑Right to Compensation Under Particular Statutory Provisions and...

84 ALR 5th 249 , Right to Workers’ Compensation for Emotional Distress or Like Injury Suffered by Claimant as Result of Sudden Stimuli Involving Nonpersonnel Action‑Compensability Under Particular Circumstances.

Encyclopedias

S.C. Jur. Shipping Law Section 107, Concurrent Compensation Coverage.

Forms

Am. Jur. Pl. & Pr. Forms Workers’ Compensation Section 1 , Introductory Comments.

Treatises and Practice Aids

Modern Workers’ Compensation Section 321:2, Compulsory and Elective Coverage.

LAW REVIEW AND JOURNAL COMMENTARIES

An Analysis of the Problem of Determining Non‑Schedule Partial Disability Claims Under the South Carolina Workmen’s Compensation Law, 9 SCLQ 355 (1957).

Annual Survey of South Carolina Law: Administrative Law: Workmen’s Compensation. 27 S.C. L. Rev. 281.

Annual Survey of South Carolina Law: Administrative Law: Workmen’s Compensation. 28 S.C. L. Rev. 235.

The South Carolina Workers’ Compensation Act treats nonmarital children like bastards out of Carolina. 49 S.C. L. Rev. 1281 (Summer 1998).

Workmen’s Compensation. 25 S.C. L. Rev. 412.

Workmen’s Compensation in South Carolina. 5 SCLQ 240 (1952).

Attorney General’s Opinions

Commercial fishermen who are injured while working on the intracoastal waterway are subject to the jurisdiction of the Jones Act, 46 U.S.C.A. Section 688, and not the South Carolina Workmen’s Compensation Act. 1976‑77 Op.Atty.Gen., No. 77‑236, p 176, 1977 WL 24578.

NOTES OF DECISIONS

In general 1

Construction and application 2

Construction with other laws 3

Federal courts 6

Jurisdiction 4

Procedure 7

Review 8

When applicable 5

1. In general

This Act was fashioned upon the North Carolina Workmen’s Compensation Act and the opinions of the Supreme Court of North Carolina construing such Act are entitled to great weight. Flemon v Dickert‑Keowee, Inc. (1972) 259 SC 99, 190 SE2d 751. Carter v Penney Tire & Recapping Co. (1973) 261 SC 341, 200 SE2d 64.

Compensation laws constitute a form of social legislation and were enacted primarily for the benefit, protection and welfare of working men and their dependents, to relieve them of the uncertainties of a trial in a suit for damages, to cast upon the industry in which they are employed a share of the burden resulting from industrial accidents, and to prevent the burden of injured employees and their dependents becoming charges on society. Cokeley v Robert Lee, Inc. (1941) 197 SC 157, 14 SE2d 889. Kennerly v Ocmulgee Lumber Co. (1945) 206 SC 481, 34 SE2d 792. Marchbanks v Duke Power Co. (1939) 190 SC 336, 2 SE2d 825. Phillips v Dixie Stores, Inc. (1938) 186 SC 374, 195 SE 646.

The Workmen’s Compensation Act is a remedial statute, its primary object being to create and preserve rights of employees who may sustain personal injuries in the course of their employment. McLain v. Carolina Power & Light Co., 1959, 172 F.Supp. 273. Workers’ Compensation 11

The Workers’ Compensation Act is a comprehensive scheme created to provide compensation to employees injured by accidents arising out of and in the course of their employment. Mendenall v. Anderson Hardwood Floors, LLC (S.C. 2013) 401 S.C. 558, 738 S.E.2d 251. Workers’ Compensation 11

The concept of workers’ compensation is founded upon recognition of the advisability, from the standpoint of society as well as of employer and employee, of discarding the common law idea of tort liability in the employer‑employee relationship and of substituting therefor the principle of liability on the employer’s part, regardless of fault, to compensate the employee, in predetermined amounts based upon his wages, for loss of earnings resulting from accidental injury arising out of and in the course of employment; the employee receives the right to swift and sure compensation, and the employer receives immunity from tort actions by the employee. Mendenall v. Anderson Hardwood Floors, LLC (S.C. 2013) 401 S.C. 558, 738 S.E.2d 251. Workers’ Compensation 6; Workers’ Compensation 11; Workers’ Compensation 2084

It is South Carolina’s policy to resolve jurisdictional doubts in favor of the inclusion of employers and employees under the Workers’ Compensation Act. Nelson v. Yellow Cab Co. (S.C. 2002) 349 S.C. 589, 564 S.E.2d 110, rehearing denied. Workers’ Compensation 51

The South Carolina Supreme Court generally accords North Carolina workers’ compensation cases weight, because the South Carolina statute was fashioned after North Carolina’s. Nelson v. Yellow Cab Co. (S.C. 2002) 349 S.C. 589, 564 S.E.2d 110, rehearing denied. Courts 95(2)

The Administrative Procedures Act establishes the standard of review for decisions by the Workers’ Compensation Commission. Code 1976, Section 1‑23‑310 et seq., Brown v. Bi‑Lo, Inc. (S.C.App. 2000) 341 S.C. 611, 535 S.E.2d 445, rehearing denied, certiorari granted, certiorari granted, reversed 354 S.C. 436, 581 S.E.2d 836. Workers’ Compensation 1804

The Workers’ Compensation Act is a form of social legislation wherein and whereby the employer and employee surrender benefits previously enjoyed under the common law in exchange for other benefits provided under the Act; one such benefit is an employee’s swift and sure compensation. Brown v. Bi‑Lo, Inc. (S.C.App. 2000) 341 S.C. 611, 535 S.E.2d 445, rehearing denied, certiorari granted, certiorari granted, reversed 354 S.C. 436, 581 S.E.2d 836. Workers’ Compensation 11

When facts are not in dispute, question of whether accident is compensable under Workers’ Compensation Act is question of law; such inquiry is not invasion of fact‑finding field of Workers’ Compensation Commission. Hicks v. Piedmont Cold Storage, Inc. (S.C.App. 1996) 324 S.C. 628, 479 S.E.2d 831, rehearing denied, certiorari granted, reversed 335 S.C. 46, 515 S.E.2d 532. Workers’ Compensation 1939.11(1)

The South Carolina Worker’s Compensation Act was tailored after the North Carolina Act, and opinions of the North Carolina Supreme Court construing the North Carolina Act are entitled to great weight with the appellate courts of South Carolina. Holley v. Owens Corning Fiberglas Corp. (S.C.App. 1990) 301 S.C. 519, 392 S.E.2d 804, certiorari granted, opinion adopted 302 S.C. 518, 397 S.E.2d 377. Workers’ Compensation 45

Since the South Carolina Workers’ Compensation Act was fashioned after that of North Carolina, the opinions of the Supreme Court of North Carolina construing North Carolina’s act are entitled to great weight in South Carolina workers’ compensation cases. Corbett v. City of Columbia (S.C.App. 1986) 290 S.C. 71, 348 S.E.2d 191, reversed 294 S.C. 327, 364 S.E.2d 459.

Trade‑off approach to workmen’s compensation under which employees injured in course of employment are assured of speedy compensation and employer is assured of immunity from tort actions by employee has benefited not only employee and employer, but society as well. Parker v. Williams and Madjanik, Inc. (S.C. 1980) 275 S.C. 65, 267 S.E.2d 524.

One of the obvious primary purposes of this Act is to prevent injured employees and those lawfully dependent upon them for support from becoming charges upon society and the public generally for support. Flemon v. Dickert‑Keowee, Inc. (S.C. 1972) 259 S.C. 99, 190 S.E.2d 751.

The American concept of workmen’s compensation is founded upon recognition of the advisability, from the standpoint of society as well as of employer and employee, of discarding the common‑law idea of tort liability in the employer‑employee relationship and of substituting therefor the principle of liability on the part of the employer, regardless of fault, to compensate the employee, in predetermined amounts based upon his wages, for loss of earnings resulting from accidental injury arising out of and in the course of the employment. Case v. Hermitage Cotton Mills (S.C. 1960) 236 S.C. 515, 115 S.E.2d 57. Workers’ Compensation 6

To say that the purpose of such legislation is to prevent an injured employee from becoming a public charge is perhaps to overstate the case, for its aim is to aid in, rather than to insure, the accomplishment to that end. Case v. Hermitage Cotton Mills (S.C. 1960) 236 S.C. 515, 115 S.E.2d 57.

The Workmen’s Compensation Act is a form of social legislation wherein and whereby the employer and employee surrender benefits previously enjoyed under the common law in exchange for other benefits provided under the Act. Bagwell v. Ernest Burwell, Inc. (S.C. 1955) 227 S.C. 168, 87 S.E.2d 583.

The South Carolina Workmen’s Compensation Act having been fashioned to the North Carolina Workmen’s Compensation Act, and practically a copy thereof, the opinions of the Supreme Court of that state construing such act are entitled to great respect. Nolan v. Daley (S.C. 1952) 222 S.C. 407, 73 S.E.2d 449. Workers’ Compensation 45

The primary purpose of the Workmen’s Compensation Act is to protect the workman who actually does the work. Smith v. Fulmer (S.C. 1941) 198 S.C. 91, 15 S.E.2d 681. Workers’ Compensation 11

2. Construction and application

The Act should be given a liberal construction in furtherance of the purposes for which it was designed. Alewine v Tobin Quarries, Inc. (1945) 206 SC 103, 33 SE2d 81. Simpkins v Lumbermens Mut. Casualty Co. (1942) 200 SC 228, 20 SE2d 733. Marchbanks v Duke Power Co. (1939) 190 SC 336, 2 SE2d 825. Layton v Hammond‑Brown‑Jennings (1939) 190 SC 425, 3 SE2d 492. Rudd v Fairforest Finishing Co. (1939) 189 SC 188, 200 SE 727. Lumber Mut. Casualty Ins. Co. v Stukes (1947, DC SC) 72 F Supp 463, revd on other grounds (CA4 SC) 164 F2d 571. Carter v Penney Tire & Recapping Co. (1973) 261 SC 341, 200 SE2d 64.

While the Supreme Court should give the Compensation Act a liberal construction, they are not justified in so construing it as to do violence to a specific requirement of the Act. Wallace v Campbell Limestone Co. (1941) 198 SC 196, 17 SE2d 309. Teigue v Appleton Co. (1952) 221 SC 52, 68 SE2d 878.

It is the established law of this State that any reasonable doubt as to the construction of a workmen’s compensation law must be resolved in favor of the claimants, its provisions reconciled if possible, its purposes effectuated and its presumptions and penalties directed toward the end of providing coverage rather than noncoverage. Cokeley v Robert Lee, Inc. (1941) 197 SC 157, 14 SE2d 889. Ham v Mullins Lumber Co. (1940) 193 SC 66, 7 SE2d 712. Baldwin v Pepsi‑Cola Bottling Co. (1959) 234 SC 320, 108 SE2d 409. De Berry v Coker Freight Lines (1959) 234 SC 304, 108 SE2d 114.

Workers’ compensation statutes provide an exclusive compensatory system in derogation of common law rights; as such, when reading a workers’ compensation statute the Court of Appeals strictly construes its terms, leaving it to the Legislature to amend and define its ambiguities. Wilson v. Charleston County School District (S.C.App. 2017) 419 S.C. 442, 798 S.E.2d 449, rehearing denied. Workers’ Compensation 2; Workers’ Compensation 51

Workers’ compensation law is to be liberally construed in favor of coverage in order to serve the beneficent purpose of the Workers’ Compensation Act; only exceptions and restrictions on coverage are to be strictly construed. Turner v. SAIIA Construction (S.C.App. 2016) 419 S.C. 98, 796 S.E.2d 150, rehearing denied. Workers’ Compensation 52; Workers’ Compensation 53

The Workers’ Compensation Act is liberally construed toward the end of providing coverage rather than denying coverage in order to further the beneficial purposes for which it was designed. Bentley v. Spartanburg County (S.C. 2012) 398 S.C. 418, 730 S.E.2d 296, rehearing denied. Workers’ Compensation 52

Any reasonable doubt as to the construction of the Workers’ Compensation Act will be resolved in favor of coverage. Bentley v. Spartanburg County (S.C. 2012) 398 S.C. 418, 730 S.E.2d 296, rehearing denied. Workers’ Compensation 52

Workers’ compensation statutes are construed liberally in favor of coverage, and the state’s policy is to resolve jurisdictional doubts in favor of the inclusion of employees within workers’ compensation coverage. Porter v. Labor Depot (S.C.App. 2007) 372 S.C. 560, 643 S.E.2d 96, rehearing denied, certiorari denied. Workers’ Compensation 52

Since workers’ compensation statutes provide an exclusive compensatory system in derogation of common law rights, court must strictly construe such statutes, leaving it to the legislature to amend and define any ambiguities. Cox v. BellSouth Telecommunications (S.C.App. 2003) 356 S.C. 468, 589 S.E.2d 766, rehearing denied, certiorari denied. Workers’ Compensation 51

The Workers’ Compensation Act is entitled to a liberal construction in furtherance of the beneficial purposes for which it was designed. Anderson v. Baptist Medical Center (S.C. 2001) 343 S.C. 487, 541 S.E.2d 526. Workers’ Compensation 52

General policy is to construe Workers’ Compensation Act in favor of coverage, rather than exclusion. Baggott v. Southern Music, Inc. (S.C. 1998) 330 S.C. 1, 496 S.E.2d 852, rehearing denied. Workers’ Compensation 52

Any doubts as to worker’s status are to be resolved in favor of coverage under Workers’ Compensation Act. Voss v. Ramco, Inc. (S.C.App. 1997) 325 S.C. 560, 482 S.E.2d 582, rehearing denied, certiorari granted. Workers’ Compensation 230

All sections of the Workers’ Compensation Act must be read together to find legislative intent. It was the intent of the legislature to insure coverage for a maximum number of employees. It was also the intent of the legislature to relieve from tort liability those who might be potentially liable to provide compensation. Brittingham v. Williams Sign Erectors, Inc. (S.C.App. 1989) 299 S.C. 259, 384 S.E.2d 319.

Any reasonable doubts as to construction should be resolved in favor of the claimant by including him within the coverage of the Worker’s Compensation Act rather than excluding him. Davis v. South Carolina Dept. of Corrections (S.C. 1986) 289 S.C. 123, 345 S.E.2d 245. Workers’ Compensation 52

Court is committed to liberal construction of Compensation Act to include injured employees within its protection rather than exclude them. Moore v. Family Service of Charleston County (S.C. 1977) 269 S.C. 275, 237 S.E.2d 84. Workers’ Compensation 52

The Workmen’s Compensation Act is remedial legislation which is entitled to a liberal construction in order to accomplish the ends and purposes for which it was enacted. Flemon v. Dickert‑Keowee, Inc. (S.C. 1972) 259 S.C. 99, 190 S.E.2d 751.

The Supreme Court is not at liberty to extend by construction the meaning implicit in the language found in the Act in order to provide a more liberal rule of compensation than that which the legislature has seen fit to adopt. Singleton v. Young Lumber Co. (S.C. 1960) 236 S.C. 454, 114 S.E.2d 837.

It is an unwarranted application of the universal rule of liberal construction of the statute in favor of compensability to say that doubt of causal connection between injury and death or disability should be resolved in favor of compensability. That is erroneous because it would found a conclusion of fact upon doubt, whereas such finding must be upon evidence. Cross v. Concrete Materials (S.C. 1960) 236 S.C. 440, 114 S.E.2d 828.

The Workmen’s Compensation Act was adopted for the benefit of the employees and their dependents, and it should be liberally construed in order to accomplish this humane purpose, but liberal construction does not mean that the Act should be converted into a form of insurance. Price v. B. F. Shaw Co. (S.C. 1953) 224 S.C. 89, 77 S.E.2d 491.

While the Workmen’s Compensation Act is to be liberally construed to the end that the benefits thereof may not be denied upon technical, narrow and strict interpretation, words should be given their established legal meaning or the meaning which the legislature intended; nor is the Court justified in so construing it as to do violence to a specific requirement of the Act. Brown v. Martin (S.C. 1943) 203 S.C. 84, 26 S.E.2d 317. Workers’ Compensation 53

3. Construction with other laws

Where provisions of the Administrative Procedures Act (APA) and the Workers’ Compensation Act directly conflict, the APA controls. However, where the APA is silent, specific provisions of existing agency law retain their viability. Since the APA contains no express provisions regarding the proper county for judicial review which impliedly repealed the forum provisions of Section 42‑17‑60, that statute continues to govern judicial review of workers’ compensation decisions. Williams v. South Carolina Dept. of Wildlife (S.C. 1987) 295 S.C. 98, 367 S.E.2d 418.

The Workers’ Compensation Act is concerned with substantive rights and liabilities of the employee and employer. An amendment to the Act subsequent to an employee’s injury does not operate to deprive either party of substantive rights fixed as of the date of the injury. Sellers v. Daniel Const. Co. (S.C. 1985) 285 S.C. 484, 330 S.E.2d 305.

4. Jurisdiction

It is the policy of South Carolina courts to resolve jurisdictional doubts in favor of the inclusion of employers and employees under the Workers’ Compensation Act. Collins v. Charlotte (S.C.App. 2012) 400 S.C. 50, 732 S.E.2d 630, affirmed 412 S.C. 283, 772 S.E.2d 510, rehearing denied. Workers’ Compensation 1348

Although doubts about jurisdiction are resolved in claimant’s favor in accordance with inclusive purposes of Workers’ Compensation Act, Court of Appeals is bound by Act as written and does not have power to expand jurisdictional reach of Act. Voss v. Ramco, Inc. (S.C.App. 1997) 325 S.C. 560, 482 S.E.2d 582, rehearing denied, certiorari granted. Workers’ Compensation 1177

South Carolina’s policy is to resolve jurisdictional doubts in favor of the inclusion of employers and employees under the Workers’ Compensation Act. Spivey v. D.G. Const. Co. (S.C.App. 1996) 321 S.C. 19, 467 S.E.2d 117, rehearing denied. Workers’ Compensation 1177

An insurance pool in Georgia, which provided benefits owed to insureds by insurers who became insolvent, was amenable to suit in a South Carolina workers’ compensation proceeding pursuant to the long‑arm statute, Section 36‑2‑803, where an insurer whose obligations had been assumed by the pool had contracted with a Georgia employer to insure risk in South Carolina, thus making the insurer subject to in personam jurisdiction, and the pool subject to such jurisdiction as the insurer’s alter‑ego or agent. Bell v. Senn Trucking Co. of Newberry (S.C. 1992) 308 S.C. 364, 418 S.E.2d 310, rehearing denied. Workers’ Compensation 1187

An employer must raise to the Workers’ Compensation Commission the factual issue of whether the Workers’ Compensation Act confers jurisdiction, and failure to do so constitutes a waiver of the issue. McCreery v. Covenant Presbyterian Church (S.C. 1990) 303 S.C. 271, 400 S.E.2d 130. Workers’ Compensation 2110

A workers’ compensation award may not be made unless an employment relationship existed at the time of the alleged injury for which the claim is made. The determination of the employer‑employee relationship is jurisdictional and the relationship must be proven by the preponderance of the evidence. Hairston v. Re: Leasing, Inc. (S.C.App. 1985) 286 S.C. 493, 334 S.E.2d 825.

The hiring, or contract for employment and not the actual commencement of work, is the jurisdictional factor necessary to bring the act into operation. Simpkins v. Lumbermens Mut. Cas. Co. (S.C. 1942) 200 S.C. 228, 20 S.E.2d 733. Workers’ Compensation 248

5. When applicable

Coverage under the Workers’ Compensation Act depends on the existence of an employment relationship. Collins v. Charlotte (S.C.App. 2012) 400 S.C. 50, 732 S.E.2d 630, affirmed 412 S.C. 283, 772 S.E.2d 510, rehearing denied. Workers’ Compensation 233

An award under the Workers’ Compensation Act will not be made unless an employment relationship existed at the time of the alleged injury for which the claim is made. Murray v. Aaron Mizell Trucking Co. (S.C.App. 1985) 286 S.C. 351, 334 S.E.2d 128. Workers’ Compensation 1772

Before the provisions of the Workmen’s Compensation Act can become applicable, the relation of master and servant, or employer and employee must exist. Cooper v. McDevitt & St. Co. (S.C. 1973) 260 S.C. 463, 196 S.E.2d 833.

6. Federal courts

A Federal district court has no power or authority to administer the Workmen’s Compensation Act, and questions under that Act such as the time of filing of claim, estoppel or otherwise, would have to be determined by the tribunal set up for that purpose, to wit, the South Carolina Industrial Commission. Bean v. Piedmont Interstate Fair Ass’n, 1954, 124 F.Supp. 385, reversed 222 F.2d 227.

7. Procedure

The remedies and procedure provided by the Workmen’s Compensation Act for cases coming within its terms are exclusive. Cummings v McCoy (1939) 192 SC 469, 7 SE2d 222. Gainey v Coker’s Pedigreed Seed Co. (1955) 227 SC 200, 87 SE2d 486. Blue Ridge Rural Electric Cooperative, Inc. v Byrd (1958, CA4 SC) 264 F2d 689.

The burden is upon the claimant to prove such facts as will render the injury compensable within the provisions of the Workmen’s Compensation Act. Brady v Sacony of St. Matthews (1957) 232 SC 84, 101 SE2d 50. Broughton v South Carolina Game & Fish Dept. (1951) 219 SC 50, 64 SE2d 152. Glover v Columbia Hospital of Richland County (1960) 236 SC 410, 114 SE2d 565. Riley v South Carolina State Ports Authority (1970) 253 SC 621, 172 SE2d 657.

Award must not be based upon surmise, conjecture or speculation. Brady v Sacony of St. Matthews (1957) 232 SC 84, 101 SE2d 50. Glover v Columbia Hospital of Richland County (1960) 236 SC 410, 114 SE2d 565. Lorick v South Carolina Electric & Gas Co. (1965) 245 SC 513, 141 SE2d 662.

Under the Worker’s Compensation Act, a claimant may proceed under Section 42‑9‑10 or Section 42‑9‑20 to prove a general disability; alternatively, he or she may proceed under Section 42‑9‑30 to prove a loss or loss of use of, a member, organ, or part of the body for which specific awards are listed in the statute. An award under the general disability statutes must be predicated upon a showing of loss of earning capacity, whereas an award under the scheduled loss statute does not require such a showing. The commission may award compensation to a claimant under the scheduled loss statute rather than the general disability statutes so long as there is substantial evidence to support such an award. Fields v. Owens Corning Fiberglas (S.C. 1990) 301 S.C. 554, 393 S.E.2d 172.

The rights and liabilities of employee and employer under the Workmen’s Compensation Act are purely statutory and are to be judged by the terms of the Act. Owens v. Herndon (S.C. 1969) 252 S.C. 166, 165 S.E.2d 696. Workers’ Compensation 2

A claimant, who asserts the right to compensation, must establish by the preponderance of the evidence the facts which will entitle her to an award under the Workmen’s Compensation Act. Lorick v. South Carolina Elec. & Gas Co. (S.C. 1965) 245 S.C. 513, 141 S.E.2d 662. Workers’ Compensation 1409; Workers’ Compensation 1421

It was not the intention of the legislature that the Act could be accepted in part and rejected in part. Kennerly v. Ocmulgee Lumber Co. (S.C. 1945) 206 S.C. 481, 34 S.E.2d 792.

A compensation act that is compulsory or that has been accepted by both employer and employee excludes other remedies only when conditions existing in a particular case have brought it within the terms of the Act. The mere fact that the employer and employee are subject to the Act does not deprive them of their common‑law remedies if conditions in the case place it outside the scope of the Act, as, for example, where the injury suffered was not caused by an accident, or did not result in disability. Stewart v. McLellan’s Stores Co. (S.C. 1940) 194 S.C. 50, 9 S.E.2d 35. Workers’ Compensation 2090

8. Review

The issue of whether the claimant was an employee at the time he was injured was jurisdictional, so the Commission’s conclusion was subject to judicial review even though supported by evidence. Chavis v Watkins (1971) 256 SC 30, 180 SE2d 648. Cooper v McDevitt & Street Co. (1973) 260 SC 463, 196 SE2d 833.

Where there are no disputed facts, the question of whether an accident is compensable under the Workers’ Compensation Law is a question of law. Williams v. Drywall (S.C.App. 2013) 402 S.C. 173, 739 S.E.2d 892, rehearing denied. Workers’ Compensation 1716

Whether or not an employer‑employee relationship exists within the meaning of the workers’ compensation law is a jurisdictional question for which the reviewing court can take its own view of the preponderance of the evidence. Collins v. Charlotte (S.C.App. 2012) 400 S.C. 50, 732 S.E.2d 630, affirmed 412 S.C. 283, 772 S.E.2d 510, rehearing denied. Workers’ Compensation 1709; Workers’ Compensation 1939.11(3)

Supreme Court must affirm the findings of fact made by the Workers’ Compensation Commission if they are supported by substantial evidence, and substantial evidence is not a mere scintilla of evidence, but evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the Commission reached. McCraw v. Mary Black Hosp. (S.C. 2002) 350 S.C. 229, 565 S.E.2d 286. Workers’ Compensation 1939.4(4)

Judicial review of the Commission’s order is limited to determining whether the findings are supported by substantial evidence. Substantial evidence is that evidence which would allow reasonable minds to reach the conclusion that the full commission reached; it is something less than the weight of the evidence, and the possibility of drawing 2 inconsistent conclusions from the evidence does not prevent the Commission’s finding from being supported by substantial evidence. Camp v. Spartan Mills (S.C.App. 1990) 302 S.C. 348, 396 S.E.2d 121. Workers’ Compensation 1939.4(4)

Although the exceptions to the single commissioner’s findings set forth by an employee in appealing to the full commission, were in violation of Supreme Court Rule 4, Section 6, the circuit court did not err in granting a review of the appeal where the issue sought to be raised by the exceptions was reasonably clear from the employee’s arguments, the issue was ruled on by the single commissioner, and the issue could readily be determined and was meritorious. Holston v. Allied Corp. (S.C.App. 1989) 300 S.C. 174, 386 S.E.2d 793.

Lack of subject matter jurisdiction cannot be waived and an appellate court may raise it ex mero motu. McCreery v. Covenant Presbyterian Church (S.C.App. 1989) 299 S.C. 218, 383 S.E.2d 264, reversed 303 S.C. 271, 400 S.E.2d 130. Appeal And Error 23

Where provisions of the Administrative Procedures Act (APA) and the Workers Compensation Act conflict, the APA controls. Thus, a notice of appeal which failed to state the grounds or errors of law in support of the appeal as required by the APA, could not be amended after expiration of the 30‑day statutory period for filing the appeal under the APA. Pringle v. Builders Transport (S.C. 1989) 298 S.C. 494, 381 S.E.2d 731.

The determination of the relationship of employer‑employee is jurisdictional and review by the Court of Appeals in such cases is governed by the preponderance of the evidence rule. Murray v. Aaron Mizell Trucking Co. (S.C.App. 1985) 286 S.C. 351, 334 S.E.2d 128. Workers’ Compensation 1939.4(1)

The State Industrial Commission is the factfinder in worker’s compensation cases and a reviewing court cannot substitute its opinion of the facts when the Commission’s findings are supported by competent evidence. Skipper v. Southern Bell Tel. & Tel. Co. (S.C. 1978) 271 S.C. 152, 246 S.E.2d 94. Workers’ Compensation 1939.4(3); Workers’ Compensation 1969

The Commission is the fact‑finding body in workmen’s compensation cases and on appeal the county court and the Supreme Court are limited in their review of the facts to a determination of whether or not there is any competent evidence to support the factual findings of the Commission. Arnold v. Benjamin Booth Co. (S.C. 1971) 257 S.C. 337, 185 S.E.2d 830.

On appeal of workmen’s compensation cases to the county court and the Supreme Court, it is only where the evidence gives rise to but one reasonable inference that the question becomes one of law for the court to decide. Arnold v. Benjamin Booth Co. (S.C. 1971) 257 S.C. 337, 185 S.E.2d 830. Workers’ Compensation 1939.7

**SECTION 42‑1‑20.** Application of definitions.

When used in this title, unless the context otherwise requires, the terms dealt with in Sections 42‑1‑30 to 42‑1‑190 shall include the categories or shall have the meanings severally ascribed to them in said sections.

HISTORY: 1962 Code Section 72‑2; 1952 Code Section 72‑2; 1942 Code Section 7035‑2; 1936 (39) 1231.

NOTES OF DECISIONS

In general 1

1. In general

The very purpose of giving these definitions at the beginning of the Act was to obviate the necessity of defining and qualifying these terms throughout the various subsequent sections of the Act. Young v. Hyman Motors (S.C. 1942) 199 S.C. 233, 19 S.E.2d 109.

**SECTION 42‑1‑30.** “Adoption” and “adopted” defined.

The term “adoption” or “adopted” means legal adoption prior to the time of the injury.

HISTORY: 1962 Code Section 72‑3; 1952 Code Section 72‑3; 1942 Code Section 7035‑2; 1936 (39) 1231.

CROSS REFERENCES

Adoption, generally, see Section 63‑9‑30 et seq.

**SECTION 42‑1‑40.** “Average weekly wages” defined.

“Average weekly wages” means the earnings of the injured employee in the employment in which he was working at the time of the injury during the period of fifty‑two weeks immediately preceding the date of the injury, including the subsistence allowance paid to veteran trainees by the United States Government if the amount of the allowance is reported monthly by the trainee to his employer. “Average weekly wage” must be calculated by taking the total wages paid for the last four quarters immediately preceding the quarter in which the injury occurred as reported on the Department of Employment and Workforce’s Employer Contribution Reports divided by fifty‑two or by the actual number of weeks for which wages were paid, whichever is less. When the employment, prior to the injury, extended over a period of less than fifty‑two weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed, as long as results fair and just to both parties will be obtained. Where, by reason of a shortness of time during which the employee has been in the employment of his employer or the casual nature or terms of his employment, it is impracticable to compute the average weekly wages as defined in this section, regard is to be had to the average weekly amount which during the fifty‑two weeks previous to the injury was being earned by a person of the same grade and character employed in the same class of employment in the same locality or community.

When for exceptional reasons the foregoing would be unfair, either to the employer or employee, such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury. Whenever allowances of any character made to an employee in lieu of wages are a specified part of a wage contract they are deemed a part of his earnings.

HISTORY: 1962 Code Section 72‑4; 1952 Code Section 72‑4; 1942 Code Section 7035‑2; 1936 (39) 1231; 1943 (43) 91; 1944 (43) 1329; 1946 (44) 1390; 1949 (46) 247; 1964 (53) 1828; 1969 (56) 297; 1971 (57) 788; 1977 Act No. 121; 1983 Act No. 33 Section 1; 1996 Act No. 424, Section 1, eff June 18, 1996.

Editor’s Note

1996 Act No. 424, Section 13, provides, in part, as follows:

“Section 13. Employers who have filed with the Workers’ Compensation Commission a notice to reject the provisions of Title 42 before the effective date of the 1996 amendment will have until July 1, 1997, to comply with the provisions of the 1996 amendment relating to insuring their workers’ compensation liabilities. Any employer who has rejected the terms of this title prior to approval of the 1996 amendment and has procured another form of employee benefits insurance shall comply, not later than July 1, 1997, with the provisions of the 1996 amendment relating to the insuring of its workers’ compensation liabilities. Furthermore, nothing in the 1996 amendment shall affect or alter any cause of action, right, or claim accruing before the effective date of the 1996 amendment; however, any such cause of action, remedy, or claim accruing before the effective date of the 1996 amendment shall be governed by the law prior to the effective date of the 1996 amendment”.

CROSS REFERENCES

Definition of average weekly wages for purposes of unemployment compensation, see Section 41‑27‑140.

Designated average weekly wages for certain categories of employees, see Section 42‑7‑65.

Library References

Workers’ Compensation 816.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 580 to 581, 591 to 597, 602, 609.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 201:1, Wage Computation.

Modern Workers’ Compensation Section 201:2, Short‑Term Workers.

Modern Workers’ Compensation Section 201:3, Irregular Earnings.

Modern Workers’ Compensation Section 201:4, Absences.

Modern Workers’ Compensation Section 201:5, Time for Determining Wages.

Modern Workers’ Compensation Section 201:9, Casual Labor.

Modern Workers’ Compensation Section 201:18, Veterans.

Modern Workers’ Compensation Section 201:31, Expense Reimbursements and Allowances.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Workmen’s Compensation; Computation of Average Weekly Wage. 31 S.C. L. Rev. 162.

NOTES OF DECISIONS

In general 1

Calculation of wage 4

Deductions 8

Exceptional reason 3

Fringe benefits 6

Merit increases 7

Multiple jobs 5

Presumptions and burden of proof 9

Probable future earning capacity 2

Review 11

Sufficiency of evidence 10

1. In general

Value of use of home provided by employer was properly included as part of claimant’s weekly wage in workers’ compensation case; ample evidence in the record indicated that the residence was a specified part of the wage contract, rather than a gratuitous gift from employer, the claimant’s father. Bazen v. Badger R. Bazen Co., Inc. (S.C.App. 2010) 388 S.C. 58, 693 S.E.2d 436. Workers’ Compensation 831

Claimant’s average weekly wage was properly calculated in workers’ compensation case; single commissioner complied with statute that required that the average weekly wage be based on the actual number of week for which wages were paid, rather than total number weeks in a year. Bazen v. Badger R. Bazen Co., Inc. (S.C.App. 2010) 388 S.C. 58, 693 S.E.2d 436. Workers’ Compensation 813

Employee who worked three or four months per year until he received maximum he was permitted to earn without penalty while drawing social security payments was not entitled to have his “average weekly wages” determined by dividing the earnings during the period of employment by the number of weeks worked where such determination totaled almost twice as much as the employee actually earned during any one of the preceding nine years; employee’s average weekly wage should have been determined by such other method as would most nearly approximate the amount which the injured employee would be earning were it not for the injury. Bennett v. Gary Smith Builders (S.C. 1978) 271 S.C. 94, 245 S.E.2d 129. Workers’ Compensation 822

An employee’s earning capacity at the time of an accident is the total of his wages, and earnings from concurrent employments can be used in computing the average weekly wage. Foreman v. Jackson Minit Markets, Inc. (S.C. 1975) 265 S.C. 164, 217 S.E.2d 214.

In determining the rate of compensation for a permanently and totally disabled volunteer firemen whose lost earning capacity exceeded the statutorily set salary for volunteer firemen, his voluntary firemen’s salary could be combined with his other wages to compute his average weekly wages. Boles v. Una Water Dist. (S.C. 1987) 291 S.C. 282, 353 S.E.2d 286. Workers’ Compensation 830

2. Probable future earning capacity

The objective of wage calculation is to arrive at a fair approximation of the workers’ compensation claimant’s probable future earning capacity. Brown v. Peoplease Corp. (S.C.App. 2013) 402 S.C. 476, 741 S.E.2d 761, certiorari denied. Workers’ Compensation 816

Workers’ compensation statute that sets forth several alternate methods for calculating a claimant’s average weekly wage provides an elasticity or flexibility with a view toward always achieving the ultimate objective of reflecting fairly a claimant’s probable future earning loss. Williams v. Drywall (S.C.App. 2013) 402 S.C. 173, 739 S.E.2d 892, rehearing denied. Workers’ Compensation 813

The objective of wage calculation under Workers’ Compensation Law is to arrive at a fair approximation of a claimant’s probable future earning capacity. Williams v. Drywall (S.C.App. 2013) 402 S.C. 173, 739 S.E.2d 892, rehearing denied. Workers’ Compensation 816

The workers’ compensation statute which sets forth several different methods for calculating the claimant’s average weekly wage provides an elasticity or flexibility with a view toward always achieving the ultimate objective of reflecting fairly a claimant’s probable future earning loss. Sellers v. Pinedale Residential Center (S.C.App. 2002) 350 S.C. 183, 564 S.E.2d 694. Workers’ Compensation 816

The objective of wage calculation for workers’ compensation purposes is to arrive at a fair approximation of the claimant’s probable future earning capacity. Sellers v. Pinedale Residential Center (S.C.App. 2002) 350 S.C. 183, 564 S.E.2d 694. Workers’ Compensation 820

The disability of a workers’ compensation claimant reaches into the future, not the past; his loss as a result of injury must be thought of in terms of its impact on probable future earnings, for purposes of calculating the claimant’s average weekly wage. Sellers v. Pinedale Residential Center (S.C.App. 2002) 350 S.C. 183, 564 S.E.2d 694. Workers’ Compensation 835

Workers’ Compensation Commission was to consider the future earning capacity of claimant when determining the claimant’s average weekly wage; the Commission was authorized by statute to consider the claimant’s probable future earning capacity as an electrician in determining the average weekly wage that was nearly approximate the amount which the claimant would have been earning were it not for his injury, and prior to his accident which left him a paraplegic the claimant had clearly intended to become an electrician. Sellers v. Pinedale Residential Center (S.C.App. 2002) 350 S.C. 183, 564 S.E.2d 694. Workers’ Compensation 835

The objective of wage calculation is to arrive at a fair approximation of claimant’s probable future earning capacity, his disability reaches into the future, not the past and his loss as a result of injury must be thought of in terms of its impact on probable future earnings. Bennett v. Gary Smith Builders (S.C. 1978) 271 S.C. 94, 245 S.E.2d 129. Workers’ Compensation 813

3. Exceptional reason

Exceptional reasons existed for Workers’ Compensation Commission to deviate from the primary method of calculating average weekly wages for purposes of calculating workers’ compensation benefits; employer paid claimant his regular salary of $840 per week after the injury, employer’s motive was questionable and appeared to be an attempt to avoid filing a claim with its insurance carrier, and claimant ceased working only when he could no longer physically perform his duties. Swilling v. Pride Masonry of Gaffney (S.C.App. 2012) 401 S.C. 178, 736 S.E.2d 672. Workers’ Compensation 813; Workers’ Compensation 816

Alternative to calculating average weekly wage for purposes of workers’ compensation, which allows some other method of computing average weekly wages as will most nearly approximate the amount which the injured employee would be earning were it not for the injury, can only be used by the workers’ compensation commission when it makes factual findings that explain the exceptional reasons it finds the other methods are unfair. Pilgrim v. Eaton (S.C.App. 2010) 391 S.C. 38, 703 S.E.2d 241. Workers’ Compensation 814

Workers’ compensation claimant’s earned pay increase qualified as an “exceptional reason” to recalculate her average weekly wage; claimant earned her pay increase by voluntarily pursuing special certification and licensing, the additional pay was a merit‑based reward given in recognition of claimant’s efforts to obtain a commercial driver’s license and was not merely a standard cost‑of‑living increase or step increase based on longevity of service, and the raise was not speculative, but, rather, was an established, guaranteed amount already in place at the time of the accident. Elliott v. S.C. Dept. of Transp. (S.C.App. 2004) 362 S.C. 234, 607 S.E.2d 90. Workers’ Compensation 819

Claimant’s temporary dual employment during holiday season was an “exceptional reason” that justified Workers’ Compensation Commission’s decision to deviate from the statutory method to calculate claimant’s average weekly wage. Brunson v. Wal‑Mart Stores, Inc. (S.C.App. 2001) 344 S.C. 107, 542 S.E.2d 732. Workers’ Compensation 828

In workers’ compensation appeal in which claimant’s dual employment over the holiday season was an “exceptional reason” that justified deviation from statutory method used to calculate claimant’s average weekly wage, remand to the Workers’ Compensation Commission was required for a factual finding as to how long claimant would have worked both jobs during the holidays, as it would be grossly unfair to require employer for whom claimant was working at the time of injury to make payments as initially determined by the Commission, where claimant, at time of injury, gave notice to that employer of his resignation. Brunson v. Wal‑Mart Stores, Inc. (S.C.App. 2001) 344 S.C. 107, 542 S.E.2d 732. Workers’ Compensation 1950

An increase of 63 percent in a claimant’s wages in less than 12 months constituted an “exceptional reason” under Section 42‑1‑40 which would make it unfair to calculate the claimant’s “average weekly wages” according to the ordinary definition of such wages in the statute. Booth v. Midland Trane Heating and Air Conditioning (S.C.App. 1989) 298 S.C. 251, 379 S.E.2d 730.

4. Calculation of wage

The objective of wage calculation for purposes of workers’ compensation is to arrive at a fair approximation of the claimant’s probable future earning capacity. Swilling v. Pride Masonry of Gaffney (S.C.App. 2012) 401 S.C. 178, 736 S.E.2d 672. Workers’ Compensation 816

Alternative method of calculating in workers’ compensation proceeding the claimant’s average weekly wage, which divides annual salary by the actual number of weeks worked versus 52 weeks, is proper if two predicate conditions exist: (1) it is practicable to use the alternative method and (2) the calculation yields a result fair and just to both parties. Pugh v. Piedmont Mechanical (S.C.App. 2011) 396 S.C. 31, 719 S.E.2d 676. Workers’ Compensation 814

Workers’ compensation commission’s calculation of claimant’s average weekly wage by multiplying $18, which was the hourly rate of pay at the time of his injury, by a 40‑hour week amounted to an error of law that resulted in an average weekly wage that was clearly erroneous, where claimant had only been working for employers for 29.5 hours before he was injured. Pilgrim v. Eaton (S.C.App. 2010) 391 S.C. 38, 703 S.E.2d 241. Workers’ Compensation 813

Use of first alternative way to calculate average weekly wage for purposes of workers’ compensation claim when a claimant had less than 52 weeks of wage data, which calculation involved dividing claimant’s earnings by the number of weeks and parts thereof during which the claimant earned wages, was not practicable in situation where claimant only worked for employer for 29.5 hours; 29.5 hours of wage data could not yield a reasonably accurate calculation of an average that was designed to be based on a year of data. Pilgrim v. Eaton (S.C.App. 2010) 391 S.C. 38, 703 S.E.2d 241. Workers’ Compensation 814

5. Multiple jobs

Calculating employee’s average weekly wage at time of death by dividing his total earnings from two jobs by the number of weeks elapsed in year prior to employee’s death was reasonable, in light of conflicting evidence on the length of time that employee worked at second job. Code 1976, Sections 42‑1‑40; S.C.Code Regs. 67‑606, 67‑1603(B). Steele v. Self Serve, Inc. (S.C.App. 1999) 335 S.C. 323, 516 S.E.2d 674. Workers’ Compensation 828

Generally, when an employee works at concurrent jobs, the employee’s wages from his multiple jobs may be combined to compute his average weekly wage under worker’s compensation law. Steele v. Self Serve, Inc. (S.C.App. 1999) 335 S.C. 323, 516 S.E.2d 674. Workers’ Compensation 828

Where weekly compensation of disabled employee was computed on basis of combination of wages earned in employment where injury occurred and other unconnected employment, the Supreme Court upheld the award on the facts of this case but stated that such was not to be considered as a precedent for the purpose of computing an employee’s average weekly wage within the contemplation of the Workmen’s Compensation Act. McCummings v. Anderson Theatre Co. (S.C. 1954) 225 S.C. 187, 81 S.E.2d 348.

6. Fringe benefits

Fringe benefits of medical, disability, and life insurance payments could not be included when calculating claimant’s average weekly wage, where they were not in lieu of wages or a specified part of a wage contract. Anderson v. Baptist Medical Center (S.C. 2001) 343 S.C. 487, 541 S.E.2d 526. Workers’ Compensation 831

7. Merit increases

Workers’ compensation claimant’s post‑injury merit increases did not justify deviating from the statutory method of average weekly wage calculation. Roberts v. McNair Law Firm (S.C.App. 2005) 366 S.C. 50, 619 S.E.2d 453, rehearing dismissed. Workers’ Compensation 819

8. Deductions

Workers’ compensation claimant’s compensation rate based on his earnings as subcontractor is determined based on his net taxable income even though he was charged workers’ compensation premiums based on his gross earnings where although claimant’s gross earnings was $37,070, he had deducted business expenses on his income tax form which reduced his net income to $14,150. Stephen v. Avins Const. Co. (S.C.App. 1996) 324 S.C. 334, 478 S.E.2d 74, rehearing denied. Workers’ Compensation 816

Mileage deductions taken by a worker injured in the course and scope of employment and entitled to Workers’ Compensation benefits, were not includable in the worker’s income for purposes of computing such benefits since mileage deductions are no different than the other expenses of doing business. Wright v. Wright (S.C.App. 1991) 306 S.C. 331, 411 S.E.2d 829, certiorari denied. Workers’ Compensation 816

9. Presumptions and burden of proof

Workers’ compensation claimant has the burden of proving wages earned from jobs other than the one where the accident occurred, for purposes of calculating average weekly wage. Steele v. Self Serve, Inc. (S.C.App. 1999) 335 S.C. 323, 516 S.E.2d 674. Workers’ Compensation 1374

10. Sufficiency of evidence

Evidence was sufficient to support single commissioner’s finding that a fair average weekly wage for workers’ compensation claimant was $740.38 with a resulting compensation rate of $493.84; commissioner assumed claimant would eventually earn the highest amount a driver in his situation could earn, and took into account possible future earnings and wage increases in calculating claimant’s average weekly wage. Brown v. Peoplease Corp. (S.C.App. 2013) 402 S.C. 476, 741 S.E.2d 761, certiorari denied. Workers’ Compensation 1609.5

Substantial evidence supported decision of the Appellate Panel of the Workers’ Compensation Commission to calculate claimant’s “average weekly wages” pursuant to the standard statutory method, dividing her total earnings in the year prior to her injury by 52 weeks; although claimant argued that she worked fewer than 52 weeks in the preceding year, that some wage records had been omitted, and that the Commission should have used an alternate method to calculate her weekly wage rate, claimant failed to produce wage records, pay stubs, or any other evidence to support her claims. Williams v. Drywall (S.C.App. 2013) 402 S.C. 173, 739 S.E.2d 892, rehearing denied. Workers’ Compensation 1609.5

Record did not establish that calculating claimant’s average weekly wage for second work‑related knee injury based on 17‑week period that he worked prior to that injury after returning to work following first injury was fair and just to both parties, and therefore matter would be remanded to Appellate Panel of Workers’ Compensation Commission to reconsider and clarify its method of calculation; method used by Appellate Panel resulted in 37 percent decrease from average weekly wage for first injury to the average weekly wage for second injury, and natural variance in available work in pipe‑fitting industry made capturing the ebb and flow of work in a 17‑week period difficult. Pugh v. Piedmont Mechanical (S.C.App. 2011) 396 S.C. 31, 719 S.E.2d 676. Workers’ Compensation 814; Workers’ Compensation 1950

Substantial evidence supported Workers’ Compensation Commission’s decisions that exceptional circumstances justified deviation from the usual statutory method of average weekly wage computation and that company should be included as an employer in claimant’s average weekly wage computation, even though claimant was not working for company at time of injury, because claimant intended to go back to work for company; claimant was only 24, he had worked year‑round with multiple employers, and were it not for his injury and subsequent paraplegia, claimant would be working full‑time and part‑time, year‑round for several different employers. Forrest v. A.S. Price Mechanical (S.C.App. 2007) 373 S.C. 303, 644 S.E.2d 784, rehearing denied, certiorari denied. Workers’ Compensation 828

11. Review

In workers’ compensation appeal, employer failed to preserve for review contention that circuit court should have remanded case to Workers’ Compensation Commission for sufficient findings of fact in regard to claimant’s dual employment status and calculation of his average weekly wage, where employer did not raise issue in the circuit court. Brunson v. Wal‑Mart Stores, Inc. (S.C.App. 2001) 344 S.C. 107, 542 S.E.2d 732. Workers’ Compensation 1846

**SECTION 42‑1‑50.** “Average weekly wage in this State for the preceding fiscal year” defined.

As used in this title, the term “average weekly wage in this State for the preceding fiscal year” shall mean the average weekly wage for that period determined by the Department of Employment and Workforce for employment covered by the employment security compensation law.

HISTORY: 1962 Code Section 72‑8.1; 1974 (58) 2265; 1976 Act No. 532 Section 1.

CROSS REFERENCES

Applicability of this section to awards of State Office of Victim Assistance, see Section 16‑3‑1180.

LAW REVIEW AND JOURNAL COMMENTARIES

Products Liability ‑ An Analysis of the Law Concerning Design and Warning Defects in Workplace Products. 33 S.C. L. Rev. 273 (December 1981).

**SECTION 42‑1‑60.** “Carrier” and “insurer” defined.

The term “carrier” or “insurer” means any person or fund authorized under Section 42‑5‑20 to insure under this title and includes self‑insurers.

HISTORY: 1962 Code Section 72‑5; 1952 Code Section 72‑5; 1942 Code Section 7035‑2; 1936 (39) 1231.

Notes of Decisions

Unincorporated associations 1

1. Unincorporated associations

Fund created by home builders corporation to fulfill corporate members’ obligations and liabilities under South Carolina Workers’ Compensation Act was “unincorporated association”; fund was common enterprise of homebuilders who voluntarily joined together to form fund to provide workers’ compensation coverage for their businesses, and fund members were joint and severally liable for any shortfall in fund assets. Patterson v. Witter (S.C.App. 2016) 418 S.C. 66, 791 S.E.2d 294, rehearing denied. Associations 1; Associations 16; Workers’ Compensation 1058

Fund created by home builders corporation to fulfill corporate members’ obligations and liabilities under South Carolina Workers’ Compensation Act was not a “trust”; corporation did not transfer any money or property to fund’s board of trustees to hold in trust for fund’s members, agreement creating the fund contained no provision for beneficiaries, and members were required to apply to become fund members. Patterson v. Witter (S.C.App. 2016) 418 S.C. 66, 791 S.E.2d 294, rehearing denied. Trusts 1

**SECTION 42‑1‑70.** “Child”, “grandchild”, “brother” and “sister” defined.

The term “child” shall include a posthumous child, a child legally adopted prior to the injury of the employee and a stepchild or acknowledged illegitimate child dependent upon the deceased, but does not include married children unless wholly dependent upon him. “Grandchild” means a child of a child. “Brother” and “sister” include stepbrothers and stepsisters, half‑brothers and half‑sisters and brothers and sisters by adoption, but do not include married brothers nor married sisters unless wholly dependent upon the employee. “Child,” “grandchild,” “brother” and “sister” include only persons under eighteen years of age or wholly dependent upon the employee.

HISTORY: 1962 Code Section 72‑6; 1952 Code Section 72‑6; 1942 Code Section 7035‑2; 1936 (39) 1231; 1955 (49) 459.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 107:8, Children.

Modern Workers’ Compensation Section 107:9, Grandchildren.

Modern Workers’ Compensation Section 107:11, Brothers and Sisters.

LAW REVIEW AND JOURNAL COMMENTARIES

1981 Survey: South Carolina Workmen’s Compensation Act; termination of children’s benefits. 34 S.C. L. Rev. 9 (August 1982).

The South Carolina Workers’ Compensation Act treats nonmarital children like bastards out of Carolina. 49 S.C. L. Rev. 1281 (Summer 1998).

NOTES OF DECISIONS

In general 1

Brother and sister 2

Illegitimate children 3

Step children 4

1. In general

For purposes of receiving death benefits under the Workers’ Compensation Law, one may be deemed wholly dependent either through a conclusive statutory presumption under Section 42‑9‑110 or through a factual demonstration under Section 42‑9‑120. Adams v. Texfi Industries (S.C. 1995) 320 S.C. 213, 464 S.E.2d 109. Workers’ Compensation 410.6; Workers’ Compensation 410.15

Absent an express statutory restriction on the broad power of the Workers’ Compensation Commission to determine a deceased worker’s dependents under the workers’ compensation law, the Commission has jurisdiction to determine the issue of paternity when determining dependency. Although the family court has exclusive jurisdiction under Section 20‑7‑420 to hear and determine actions to determine the paternity of an individual, and the determination of dependency necessarily requires a resolution of the issue of paternity, nothing in Section 20‑7‑420 either gives the family court exclusive jurisdiction to determine dependency under the workers’ compensation law or restricts the Commission’s jurisdiction to determine the issue of dependency where death benefits are claimed by a “child” under the workers’ compensation law. Brown v. Ryder Truck Rental (S.C.App. 1990) 300 S.C. 530, 389 S.E.2d 161.

One of the obvious primary purposes of this Act is to prevent injured employees and those lawfully dependent upon them for support from becoming charges upon society and the public generally for support. Flemon v. Dickert‑Keowee, Inc. (S.C. 1972) 259 S.C. 99, 190 S.E.2d 751.

Section was not intended to abrogate the rule that neither husband nor wife may testify as to nonaccess between them in any case where the question of the legitimacy of a child born in wedlock is in issue. The evidence of nonaccess must come from third persons. Barr’s Next of Kin v Cherokee, Inc. (1951) 220 SC 447, 67 SE2d 440, holding that the evidence was insufficient to show that claimant was the illegitimate child of the deceased employee. Barr’s Next of Kin v. Cherokee, Inc. (S.C. 1951) 220 S.C. 447, 68 S.E.2d 440. Parent And Child 205(1); Parent And Child 208; Witnesses 57

2. Brother and sister

For purposes of the award of workers’ compensation death benefits, married brothers or married sisters must be “wholly dependent” upon the deceased employee in order to come with in the definition of “brother” and “sister.” Adams v. Texfi Industries (S.C. 1995) 320 S.C. 213, 464 S.E.2d 109. Workers’ Compensation 420.50

3. Illegitimate children

The philosophy of the common law which denied an illegitimate child any rights, legal or social, as against its father, and imposed no duty upon the father with respect to the child, is discarded by this Act. Flemon v. Dickert‑Keowee, Inc. (S.C. 1972) 259 S.C. 99, 190 S.E.2d 751.

An illegitimate child of the deceased is entitled to compensation benefits. Flemon v. Dickert‑Keowee, Inc. (S.C. 1972) 259 S.C. 99, 190 S.E.2d 751.

It was undoubtedly the purpose of our Workmen’s Compensation Law to abrogate the common‑law rule with reference to illegitimacy, but this section [Code 1962 Section 72‑6] applies to children who are established as being illegitimate and acknowledged by the putative father. Barr’s Next of Kin v. Cherokee, Inc. (S.C. 1951) 220 S.C. 447, 68 S.E.2d 440.

4. Step children

Workers’ Compensation Commission’s finding that deceased employee’s stepchild relied on employee for reasonable necessities of life and was sufficiently dependent to be entitled to workers’ compensation benefits was supported by evidence that employee provided medical insurance coverage, braces, household utilities, groceries, car expenses, clothing, summer camp, made payments on the indebtedness on the family home, and claimed stepchild as dependent on employee’s and wife’s joint tax return. Adams v. Texfi Industries (S.C. 2000) 341 S.C. 401, 535 S.E.2d 124. Workers’ Compensation 420.23

In order to receive workers’ compensation death benefits based on dependency, stepchild or illegitimate child of deceased employee bears burden of proving that she relied upon employee for reasonable necessities of life. Adams v. Texfi Industries (S.C.App. 1998) 330 S.C. 305, 498 S.E.2d 885, rehearing denied, reversed 341 S.C. 401, 535 S.E.2d 124. Workers’ Compensation 1354

Stepchild who can show reliance upon employee at time of employee’s death for reasonable necessities of life will be deemed “wholly dependent” under workers’ compensation death benefit statute. Adams v. Texfi Industries (S.C.App. 1998) 330 S.C. 305, 498 S.E.2d 885, rehearing denied, reversed 341 S.C. 401, 535 S.E.2d 124. Workers’ Compensation 420.23; Workers’ Compensation 420.29

Level of dependence required for stepchild to be considered child of deceased employee under workers’ compensation death benefits statute is something less than being wholly dependent. Adams v. Texfi Industries (S.C.App. 1998) 330 S.C. 305, 498 S.E.2d 885, rehearing denied, reversed 341 S.C. 401, 535 S.E.2d 124. Workers’ Compensation 420.23; Workers’ Compensation 420.29

For a stepchild or illegitimate child to receive workers’ compensation benefits arising from the death of a parent, the stepchild or illegitimate child must demonstrate dependence upon the deceased. Adams v. Texfi Industries (S.C. 1995) 320 S.C. 213, 464 S.E.2d 109.

Under Workers’ Compensation Law regarding the award of death benefits, a stepchild will be deemed to be “wholly dependent” under Section 42‑9‑110 where he is determined to be dependent upon the deceased employee. Adams v. Texfi Industries (S.C. 1995) 320 S.C. 213, 464 S.E.2d 109.

The level of dependency required for a stepchild to be considered a child is something less than being “wholly dependent” for purposes of workers’ compensation death benefits. Adams v. Texfi Industries (S.C. 1995) 320 S.C. 213, 464 S.E.2d 109. Workers’ Compensation 420.23; Workers’ Compensation 420.29

The standard for determining the degree of dependency required in order for stepchildren and acknowledged illegitimate children to be deemed dependent under Section 42‑1‑70 is as follows: a dependent is one who looks to another for support and maintenance; one who is in fact dependent ‑ one who relies on another for the reasonable necessities of life. Adams v. Texfi Industries (S.C. 1995) 320 S.C. 213, 464 S.E.2d 109.

Under Section 42‑1‑70, a stepchild must be dependent on the decedent worker before she may be considered a child of the decedent, conclusively presumed to be wholly dependent under Section 42‑9‑110, for purposes of recovering death benefits. Hammond v. Pickens County Dept. of Social Services (S.C. 1994) 314 S.C. 312, 443 S.E.2d 913.

In a workers’ compensation proceeding, the stepchild of a deceased worker failed to establish that she was dependent on the decedent for support where the evidence established that she was supported by her mother (who earned $20,000 annually) and her natural father (who was paying support of $50 per week). Hammond v. Pickens County Dept. of Social Services (S.C. 1994) 314 S.C. 312, 443 S.E.2d 913.

**SECTION 42‑1‑80.** “Commission” defined.

The term “commission” means the South Carolina Workers’ Compensation Commission created under the provisions of this title.

HISTORY: 1962 Code Section 72‑7; 1952 Code Section 72‑7; 1942 Code Section 7035‑2; 1936 (39) 1231; 1986 Act No. 399, Section 1, eff May 6, 1986.

NOTES OF DECISIONS

In general 1

1. In general

In worker’s compensation cases, Industrial Commission is finder of fact, and its findings will not be disturbed on appeal if supported by substantial evidence. Byers v. Blumenthal Mills (S.C.App. 1987) 293 S.C. 82, 358 S.E.2d 717.

This section [Code 1962 Section 72‑7] defines the term “Commission” to mean the South Carolina Industrial Commission, which means the men who are appointed commissioners to administer the Act, and, of course, must mean all of them and not just one of them. Riddle v. Fairforest Finishing Co. (S.C. 1942) 198 S.C. 419, 18 S.E.2d 341. Workers’ Compensation 1076

**SECTION 42‑1‑90.** “Commission” defined; reference to administrative or judicial department.

Whenever the word “commission” is used in this title, it shall refer to the administrative department in matters relating to administration and the judicial department in matters relating to the judicial function of the commission.

HISTORY: 1962 Code Section 72‑50.12; 1974 (58) 2251.

**SECTION 42‑1‑100.** “Compensation” defined.

The term “compensation” means the money allowance payable to an employee or to his dependents as provided for in this title and includes funeral benefits provided in this title.

HISTORY: 1962 Code Section 72‑8; 1952 Code Section 72‑8; 1942 Code Section 7035‑2; 1936 (39) 1231.

RESEARCH REFERENCES

ALR Library

7 ALR 222 , Personal Liability of Member of Voluntary Association Not Organized for Personal Profit on Contract With Third Person.

88 ALR 164 , Unincorporated Association Issuing Insurance Contract as Subject to Suit as Entity in the Name in Which it Contracts.

Encyclopedias

S.C. Jur. Appeal and Error Section 122, Issues of Law.

S.C. Jur. Master and Servant Section 2, Test to Determine Status as Employee.

Attorney General’s Opinions

Whether a group health policy would exclude medical benefits for injury or disease for which the patient has been awarded workers’ compensation depends entirely upon the express language of the exclusion. While some courts have read workers’ compensation exclusions to be applicable to any injury or disease for which compensation is available regardless of the adequacy of the compensation, other courts have read such exclusions as not prohibiting benefits that supplement the workers’ compensation if additional treatment is incurred. As long as the patient is candid in his disclosure, his request for coverage presented to the health insurer should not be considered fraudulent. An employee (claimant) is not barred from submitting a request for coverage to his health insurance carrier, and additionally, is not precluded from litigating a claim that his injuries or disease is not compensable under the workers’ compensation laws. 1986 Op.Atty.Gen., No. 86‑76, p 238, 1986 WL 192034.

NOTES OF DECISIONS

In general 1

Compensable injuries 2

Pre‑existing conditions 3

1. In general

The compensation afforded by this Act is statutory in character, and the right of any claimant thereto is dependent upon the terms and conditions of the Act. On the death of the employee as the result of a compensable injury, only those persons are entitled to compensation who are within the terms of the Compensation Law, and they take subject to its conditions. Brown v Martin (1943) 203 SC 84, 26 SE2d 317. Young v Hyman Motors, Inc. (1942) 199 SC 233, 19 SE2d 109.

The exclusive nature of the remedy afforded by the South Carolina Workmen’s Compensation Act is directly related to the effect of compensation either claimed, due, or paid, under those statutes which the legislature has enacted as the ground rules. Ritter v. Allied Chemical Corp. (D.C.S.C. 1968) 295 F.Supp. 1360, affirmed 407 F.2d 403.

Though the workers’ compensation system serves a social function by providing the injured employee with sufficient income and medical care to keep him from destitution, it is not designed to compensate the employee for his injury, but merely to provide him with the bare minimum of income and medical care to keep him from being a burden to others. Thompson ex rel. Harvey v. Cisson Const. Co. (S.C.App. 2008) 377 S.C. 137, 659 S.E.2d 171, rehearing denied, certiorari granted, vacated 385 S.C. 451, 684 S.E.2d 756. Workers’ Compensation 11

North Carolina court decisions interpreting the state’s workers’ compensation statute are entitled to weight when South Carolina courts interpret their workers’ compensation law because the South Carolina statute was fashioned after that of North Carolina; however, where North Carolina’s public policy and equity principles differ materially, South Carolina’s legislative and judicial pronouncements must prevail. Thompson ex rel. Harvey v. Cisson Const. Co. (S.C.App. 2008) 377 S.C. 137, 659 S.E.2d 171, rehearing denied, certiorari granted, vacated 385 S.C. 451, 684 S.E.2d 756. Courts 95(2); Workers’ Compensation 45

Health care provider lacked standing, under Workers’ Compensation Act, to sue employee, employer, and employer’s insurance carrier, for unpaid medical benefits, but provider could sue employee, under common law, for services rendered. Roper Hosp. v. Clemons (S.C.App. 1997) 326 S.C. 534, 484 S.E.2d 598. Workers’ Compensation 1189

Even if health care provider were third‑party beneficiary of benefits paid by employer’s insurance carrier to employee, Workers’ Compensation Act’s failure to grant provider standing to pursue claim under that Act did not preclude provider from bringing contract action against employee, employer, or carrier, under common law, and thus did not violate contracts clause. Roper Hosp. v. Clemons (S.C.App. 1997) 326 S.C. 534, 484 S.E.2d 598. Constitutional Law 2752; Constitutional Law 2758; Workers’ Compensation 1189

Workers’ Compensation Act’s denial of standing to health care provider did not deprive provider of its property interest in unpaid medical bills and thus did not deny provider due process. Roper Hosp. v. Clemons (S.C.App. 1997) 326 S.C. 534, 484 S.E.2d 598. Constitutional Law 4186; Workers’ Compensation 1189

Workers’ compensation benefits are awarded not for a physical injury as such, but for “disability” produced by such injury, as measured by the employee’s capacity or incapacity to earn the wages which he was receiving at the time of his injury. Corbett v. City of Columbia (S.C.App. 1986) 290 S.C. 71, 348 S.E.2d 191, reversed 294 S.C. 327, 364 S.E.2d 459. Workers’ Compensation 880.5

Funeral expenses are to be included in determining the total compensation allowed under Code 1962 Section 72‑160. Alewine v. Tobin Quarries (S.C. 1945) 206 S.C. 103, 33 S.E.2d 81.

Workmen’s compensation, except specific benefits and that allowed for disfigurement under the present law, is for loss or impairment of capacity to obtain employment and earn wages. Ingle v. Mills (S.C. 1944) 204 S.C. 505, 30 S.E.2d 301. Workers’ Compensation 8

2. Compensable injuries

The natural consequences flowing from a compensable injury, absent an independent intervening cause, are compensable under the workers’ compensation statutes. Thompson ex rel. Harvey v. Cisson Const. Co. (S.C.App. 2008) 377 S.C. 137, 659 S.E.2d 171, rehearing denied, certiorari granted, vacated 385 S.C. 451, 684 S.E.2d 756. Workers’ Compensation 597

A mental condition which is induced by a compensable physical injury is causally related to that injury and compensable under the workers’ compensation statutes. Thompson ex rel. Harvey v. Cisson Const. Co. (S.C.App. 2008) 377 S.C. 137, 659 S.E.2d 171, rehearing denied, certiorari granted, vacated 385 S.C. 451, 684 S.E.2d 756. Workers’ Compensation 546(2)

3. Pre‑existing conditions

Aggravation of a pre‑existing condition is compensable under the workers’ compensation statutes where disability is continued for a longer time, even though no disability would normally have resulted from the injury alone, or even if the aggravation would have caused no injury to an employee who was not afflicted with the condition. Thompson ex rel. Harvey v. Cisson Const. Co. (S.C.App. 2008) 377 S.C. 137, 659 S.E.2d 171, rehearing denied, certiorari granted, vacated 385 S.C. 451, 684 S.E.2d 756. Workers’ Compensation 554

It is no defense in a workers’ compensation proceeding that the work‑related accident, standing alone, would not have caused the claimant’s condition, because the employer takes the employee as it finds him or her. Thompson ex rel. Harvey v. Cisson Const. Co. (S.C.App. 2008) 377 S.C. 137, 659 S.E.2d 171, rehearing denied, certiorari granted, vacated 385 S.C. 451, 684 S.E.2d 756. Workers’ Compensation 554

A condition is compensable under the workers’ compensation statutes unless it is due solely to the natural progression of a pre‑existing condition. Thompson ex rel. Harvey v. Cisson Const. Co. (S.C.App. 2008) 377 S.C. 137, 659 S.E.2d 171, rehearing denied, certiorari granted, vacated 385 S.C. 451, 684 S.E.2d 756. Workers’ Compensation 552

Aggravation of pre‑existing psychiatric problems is compensable under the workers’ compensation statutes if that aggravation is caused by a work‑related physical injury. Thompson ex rel. Harvey v. Cisson Const. Co. (S.C.App. 2008) 377 S.C. 137, 659 S.E.2d 171, rehearing denied, certiorari granted, vacated 385 S.C. 451, 684 S.E.2d 756. Workers’ Compensation 555.10

The causal sequence may be more indirect or complex, but as long as the causal connection is in fact present the compensability of a subsequent condition, under the workers’ compensation statutes, is beyond question. Thompson ex rel. Harvey v. Cisson Const. Co. (S.C.App. 2008) 377 S.C. 137, 659 S.E.2d 171, rehearing denied, certiorari granted, vacated 385 S.C. 451, 684 S.E.2d 756. Workers’ Compensation 597

**SECTION 42‑1‑110.** “Death” defined.

The term “death” as a basis for right to compensation means only death resulting from an injury.

HISTORY: 1962 Code Section 72‑9; 1952 Code Section 72‑9; 1942 Code Section 7035‑2; 1936 (39) 1231.

NOTES OF DECISIONS

In general 1

1. In general

The evidence was sufficient to support a finding that the death of an employee, who worked as an outside salesman and was found shot to death in the driveway of a vacant home, arose out of and in the course of employment, even though the case remained unsolved and it was unknown whether the attack on the employee was motivated by personal or work‑related reasons, where the employee was killed during the regular working hours of his employer, his body was found in a residential area within the service jurisdiction of the company in which the company had customers, the body was found a short distance from the company car, and inches away from the body were tools and documents used by the employee in his employment. Suburban Propane Gas Co. v. Deschamps (S.C.App. 1989) 298 S.C. 230, 379 S.E.2d 301.

Evidence that injury most probably aggravated pre‑existing, latent diabetic condition, causing death, amply supported findings of the Commission that death resulted from the aggravation of the pre‑existing diabetic condition, and such finding formed sound legal basis for the award of compensation. Wright v. Graniteville Co. Vaucluse Division (S.C. 1976) 266 S.C. 88, 221 S.E.2d 777.

In light of conflicting testimony whether deceased truckdriver suffered fatal heart attack before or as a result of collision, court would not disrupt full commission’s finding that heart attack was not induced by unexpected strain or overexertion in performance of duties of employment or by unusual and extraordinary conditions in employment. Robinson v. City of Cayce (S.C. 1975) 265 S.C. 441, 219 S.E.2d 835. Workers’ Compensation 1365

**SECTION 42‑1‑120.** “Disability” defined.

The term “disability” means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment.

HISTORY: 1962 Code Section 72‑10; 1952 Code Section 72‑10; 1942 Code Section 7035‑2; 1936 (39) 1231.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 200:2, Disability.

Modern Workers’ Compensation Section 321:3, Definition of “Injury” and “Accident”.

LAW REVIEW AND JOURNAL COMMENTARIES

Recovery limitation held inapplicable. 39 S.C. L. Rev. 239 (Autumn 1987).

NOTES OF DECISIONS

In general 1

Burden of proof 7

Economic theory 4

Job market 6

Measurement of compensation 3

Medical theory 5

Right to compensation 2

Sufficiency of evidence 8

1. In general

This section [Code 1962 Section 72‑10] provides how disability shall be determined, and medical opinion as to the extent of disability can have no probative value as against actual earnings. Parrott v Barfield Used Parts (1945) 206 SC 381, 34 SE2d 802. Walker v City Motor Car Co. (1958) 232 SC 392, 102 SE2d 373.

Workers’ compensation benefits are awarded not for a physical injury as such, but for “disability” produced by such injury, as measured by the employee’s capacity or incapacity to earn the wages which he was receiving at the time of his injury. Corbett v. City of Columbia (S.C.App. 1986) 290 S.C. 71, 348 S.E.2d 191, reversed 294 S.C. 327, 364 S.E.2d 459. Workers’ Compensation 880.5

This section [Code 1962 Section 72‑10] sets forth how disability shall be determined. Outlaw v. Johnson Service Co. (S.C. 1970) 254 S.C. 486, 176 S.E.2d 152.

2. Right to compensation

There is no recognition of the elements of pain and suffering or discomfort or difficulty in performing the work so long as there is no reduction of earning capacity. Walker v City Motor Car Co. (1958) 232 SC 392, 102 SE2d 373. Owens v Herndon (1969) 252 SC 166, 165 SE2d 696. Outlaw v Johnson Service Co. (1970) 254 SC 486, 176 SE2d 152.

Compensation is not awarded for the physical injury as such, but for “disability” produced by such injury. The disability is to be measured by the employee’s capacity or incapacity to earn the wages which he was receiving at the time of his injury. Keeter v Clifton Mfg. Co. (1954) 225 SC 389, 82 SE2d 520. Owens v Herndon (1969) 252 SC 166, 165 SE2d 696. Outlaw v Johnson Service Co. (1970) 254 SC 486, 176 SE2d 152.

The criterion of an injured employee’s right to compensation is whether his injury lessened his earning capacity and deprived him wholly or partly of power to obtain employment. Ingle v Mills (1944) 204 SC 505, 30 SE2d 301. Wynn v Peoples Natural Gas Co. (1961) 238 SC 1, 118 SE2d 812.

Son of employee killed on the job was not entitled to recover that portion of workers’ compensation death benefits that would have been awarded to his mother and brother had their claims not been barred by statute of limitations; mother and brother could not be said to have waived their rights to death benefits because they had no legal right to benefits. Steele v. Self Serve, Inc. (S.C.App. 1999) 335 S.C. 323, 516 S.E.2d 674. Workers’ Compensation 911

Loss of earning capacity alone is the criterion for compensation under the Act and medical opinion as to the extent of physical disability can have no probative value against actual earnings. Outlaw v. Johnson Service Co. (S.C. 1970) 254 S.C. 486, 176 S.E.2d 152.

The real question is whether the evidence is of sufficient substance to afford a reasonable basis for the Commission concluding as a matter of fact that the employee’s inability to obtain employment was due to his injury and resultant partial physical incapacity. Shealy v. Algernon Blair, Inc. (S.C. 1967) 250 S.C. 106, 156 S.E.2d 646.

A claimant is not entitled to compensation unless his periods of unemployment were attributable to an injury produced limitation on, or impairment of, his capacity to work. The burden of proving causation rested upon claimant. This burden could be met only by evidence that claimant had made reasonable efforts to obtain employment and had failed because of an injury‑produced handicap. Shealy v. Algernon Blair, Inc. (S.C. 1967) 250 S.C. 106, 156 S.E.2d 646.

The fact that after the injury the employee has not worked and has therefore earned no wages is not in itself determinative of the extent of loss of his earning capacity. Shealy v. Algernon Blair, Inc. (S.C. 1967) 250 S.C. 106, 156 S.E.2d 646.

The object of the Workmen’s Compensation Act is to relieve an injured workman from the loss or impairment of his capacity to earn wages. Shealy v. Algernon Blair, Inc. (S.C. 1967) 250 S.C. 106, 156 S.E.2d 646. Workers’ Compensation 11

Loss of earning capacity is the criterion. There is no recognition of the elements of pain and suffering, or of increased discomfort and difficulty in performing the work, as long as there is no diminution in earning capacity. Shealy v. Algernon Blair, Inc. (S.C. 1967) 250 S.C. 106, 156 S.E.2d 646.

Disability is a relative term and must be related to the occupation of the claimant. Colvin v. E. I. Du Pont De Nemours Co. (S.C. 1955) 227 S.C. 465, 88 S.E.2d 581.

It was not intended to provide any award for pain and suffering as such or for any of the other elements of damages recoverable in an ordinary action for personal injuries, except to the extent that the employee has sustained an injury resulting in the diminution of his earnings or a serious bodily disfigurement. Parrott v. Barfield Used Parts (S.C. 1945) 206 S.C. 381, 34 S.E.2d 802. Workers’ Compensation 8

The object of the Workmen’s Compensation Act is to compensate for, or to relieve from, the loss or impairment of an employee’s capacity to earn, or from the deprivation of support from his earnings, and not to indemnify for any physical ailment or impairment as such, except in the classes of cases specifically provided in the Act, and to exclude from allowable elements of compensation everything except diminution of earning power. Ingle v. Mills (S.C. 1944) 204 S.C. 505, 30 S.E.2d 301.

One of the fundamental tests of the right to compensation is not the title of the injured person, but the nature and quality of the act he is performing at the time of the injury. Willis v. Aiken County (S.C. 1943) 203 S.C. 96, 26 S.E.2d 313. Workers’ Compensation 234

3. Measurement of compensation

Disability is to be measured by the employee’s capacity or incapacity to earn the wages which he was receiving at the time of his injury. Colvin v E. I. Du Pont De Nemours Co. (1955) 227 SC 465, 88 SE2d 581. Walker v City Motor Car Co. (1958) 232 SC 392, 102 SE2d 373.

The statutory compensation which is to be awarded is for “disability” as defined by the legislature, and this is measured by the employee’s capacity, or incapacity, to earn the wages which he was receiving at the time of his injury. It is otherwise stated as the compensation for, or to relieve from, the loss or impairment of an employee’s capacity to earn, or from the deprivation of support from his earnings. Ritter v. Allied Chemical Corp. (D.C.S.C. 1968) 295 F.Supp. 1360, affirmed 407 F.2d 403. Workers’ Compensation 880.5

Workers’ compensation claimant who, upon recommendation of her surgeon and physical therapists, discontinued treatment for her work‑related back injury after becoming pregnant was entitled to temporary total compensation during time when she was not participating in treatment program; fact that claimant’s pregnancy indirectly prolonged period during which she was unemployable did not change fact that her injury, not her pregnancy, rendered her unable to work. Orr v. Elastomeric Products (S.C.App. 1996) 323 S.C. 342, 474 S.E.2d 448. Workers’ Compensation 840.5; Workers’ Compensation 850.10

The Workers’ Compensation Commission could not rely on a determination of the Veterans’ Administration, which rated the claimant as permanently and totally disabled under VA standards because of post‑traumatic stress disorder (PTSD), to support a finding that the claimant was already permanently and totally disabled prior to his accident. Stephenson v. Rice Services, Inc. (S.C.App. 1994) 314 S.C. 287, 442 S.E.2d 627, rehearing denied, certiorari granted, reversed 323 S.C. 113, 473 S.E.2d 699.

In a workers’ compensation proceeding, the employer and its carrier were not entitled to credit for temporary total disability benefits paid to the employee after the date he reached maximum medical improvement, pursuant to Section 42‑9‑210, since a finding of maximum medical improvement did not establish that the employee was no longer disabled, and without such finding, his disability was presumed to continue. Swinton v. South Carolina Dept. of Mental Health (S.C.App. 1994) 314 S.C. 202, 442 S.E.2d 215.

Disability in compensation cases is to be measured by loss of earning capacity. Wynn v. Peoples Natural Gas Co. of S. C. (S.C. 1961) 238 S.C. 1, 118 S.E.2d 812. Workers’ Compensation 880.5

Where injured automobile salesman incurred diminution in earnings but sold same number of cars in year following injury as in year preceding it, while employer’s overall sales had dropped, Supreme Court set aside partial disability award as based upon surmise, conjecture or speculation, since there was no evidence which showed affirmatively that decrease in earnings resulted from injury, or which negatived idea that such decrease was brought about by changed wage agreement, and therefore it was not reasonably inferable that decrease resulted from lessening of capacity to earn. Walker v. City Motor Car Co. (S.C. 1958) 232 S.C. 392, 102 S.E.2d 373.

Where an employee who was injured but found work at another job at higher wages sought compensation it was held that under this section [Code 1962 Section 72‑10] disability was to be measured by the capacity or incapacity to earn wages and since he was earning as much as he had prior to the injury he was not entitled to compensation as there was no disability within the meaning of that term under this section [Code 1962 Section 72‑10]. Parrott v. Barfield Used Parts (S.C. 1945) 206 S.C. 381, 34 S.E.2d 802.

Where an injury aggravates a pre‑existing condition or disease so that the disability is continued for a longer period than would normally result from the injury alone, such disability is nevertheless compensable. Cole v. State Highway Department (S.C. 1939) 190 S.C. 142, 2 S.E.2d 490. Workers’ Compensation 554

4. Economic theory

Under the more traditional “economic theory” of workers’ compensation, the goal of worker’s compensation law is to compensate workers for reductions in their earning capacity caused by work‑related injuries. Simmons v. City of Charleston (S.C.App. 2002) 349 S.C. 64, 562 S.E.2d 476, rehearing denied, certiorari dismissed. Workers’ Compensation 8

When an employee is not statutorily deemed totally disabled according to the type of injury suffered, the economic model of workers’ compensation is generally used to prove total disability. Simmons v. City of Charleston (S.C.App. 2002) 349 S.C. 64, 562 S.E.2d 476, rehearing denied, certiorari dismissed. Workers’ Compensation 850.8

Under the economic model of workers’ compensation, the Workers’ Compensation Commission may predicate a finding of total disability on the claimant’s complete loss of earning capacity as a result of a work‑related injury. Simmons v. City of Charleston (S.C.App. 2002) 349 S.C. 64, 562 S.E.2d 476, rehearing denied, certiorari dismissed. Workers’ Compensation 880.3

5. Medical theory

Under the “medical theory” of workers’ compensation, the focus is on the medical impairment of the employee, rather than the employee’s earning capacity. Simmons v. City of Charleston (S.C.App. 2002) 349 S.C. 64, 562 S.E.2d 476, rehearing denied, certiorari dismissed. Workers’ Compensation 8

6. Job market

The ability to perform limited tasks for which no stable job market exists does not prevent an employee from proving total disability for workers’ compensation purposes. Simmons v. City of Charleston (S.C.App. 2002) 349 S.C. 64, 562 S.E.2d 476, rehearing denied, certiorari dismissed. Workers’ Compensation 880.11

7. Burden of proof

For workers’ compensation claimant to meet his burden of showing disability, as necessary to be entitled to benefits, claimant must show that (1) he failed to obtain employment because of an injury produced handicap, and (2) he made reasonable efforts to obtain employment. Johnson v. Rent‑A‑Center, Inc. (S.C. 2012) 398 S.C. 595, 730 S.E.2d 857, rehearing denied. Workers’ Compensation 880.20(1)

8. Sufficiency of evidence

Substantial evidence supported conclusion that workers’ compensation claimant, who had suffered work‑related injuries to her neck, shoulders, and chest, was disabled, as necessary for her to be entitled to temporary total disability (TTD) benefits; claimant’s injuries prevented her from obtaining employment as a phlebotomist, in that phlebotomist and certified nurse assistant (CNA) duties were coterminus, but doctors had determined that claimant’s injuries rendered her unsuitable to work as a CNA, claimant had submitted numerous application to medical providers for work as a phlebotomist, without success, and her employment history before and after her injuries indicated no history of malingering. Johnson v. Rent‑A‑Center, Inc. (S.C. 2012) 398 S.C. 595, 730 S.E.2d 857, rehearing denied. Workers’ Compensation 1646.10

Firefighter was not required to offer medical evidence demonstrating that he was disabled in order to recover for total disability, after firefighter’s leg was amputated due to complications from a spider bite; evidence that firefighter suffered a substantial impairment to his earning capacity was unable to compete in the job market was sufficient to recover total disability benefits. Simmons v. City of Charleston (S.C.App. 2002) 349 S.C. 64, 562 S.E.2d 476, rehearing denied, certiorari dismissed. Workers’ Compensation 1417; Workers’ Compensation 1627.17(2); Workers’ Compensation 1646.14

Notwithstanding that claimant was unable to perform any kind of work following work‑related injury, Workers’ Compensation Commission’s conclusion that claimant’s injury did not aggravate his posttraumatic stress disorder was supported by substantial evidence; one psychologist testified that even before accident claimant could function only within certain civilian jobs in military setting, and other psychologists and hospital records indicated that claimant was basically unemployable prior to accident and incapable of holding jobs for any length of time. Stephenson v. Rice Services, Inc. (S.C. 1996) 323 S.C. 113, 473 S.E.2d 699, rehearing denied. Workers’ Compensation 1544.6(8)

The determination of Workers’ Compensation Commission that the claimant was already permanently and totally disabled prior to his accident was unsupported by the evidence, in view of the fact that the claimant was able to return to work and perform his job prior to the accident. Stephenson v. Rice Services, Inc. (S.C.App. 1994) 314 S.C. 287, 442 S.E.2d 627, rehearing denied, certiorari granted, reversed 323 S.C. 113, 473 S.E.2d 699.

**SECTION 42‑1‑130.** “Employee” defined.

The term “employee” means every person engaged in an employment under any appointment, contract of hire, or apprenticeship, expressed or implied, oral or written, including aliens and also including minors, whether lawfully or unlawfully employed, but excludes a person whose employment is both casual and not in the course of the trade, business, profession, or occupation of his employer; and as relating to those employed by the State, the term “employee” includes all members of the South Carolina State and National Guard while performing duties in connection with the membership except duty performed pursuant to Title 10 and Title 32 of the United States Code; all volunteer state constables appointed pursuant to Section 23‑1‑60, while performing duties in connection with their appointments and authorized by the State Law Enforcement Division; and all officers and employees of the State, except those elected by the people, or by the General Assembly, or appointed by the Governor, either with or without the confirmation of the Senate; and as relating to municipal corporations and political subdivisions of the State, the term “employee” includes all officers and employees of municipal corporations and political subdivisions, except those elected by the people or elected by the council or other governing body of any municipal corporation or political subdivision, who act in purely administrative capacities and are to serve for a definite term of office. Any reference to an employee who has been injured or when the employee is dead, includes also his legal representative, dependents, and other persons to whom compensation may be payable.

Any sole proprietor or partner of a business whose employees are eligible for benefits under this title may elect to be included as employees under the workers’ compensation coverage of the business if they are actively engaged in the operation of the business and if the insurer is notified of their election to be included. Any sole proprietor or partner, upon this election, is entitled to employee benefits and is subject to employee responsibilities prescribed in this title.

HISTORY: 1962 Code Section 72‑11; 1952 Code Section 72‑11; 1942 Code Section 7035‑2; 1936 (39) 1231; 1943 (43) 91; 1969 (56) 297; 1974 (58) 2210, 2785; 1976 Act No. 547; 1985 Act No. 174, Section 1, eff June 24, 1985; 1996 Act No. 451, Section 2, eff June 18, 1996; 2002 Act No. 339, Section 37, eff July 2, 2002.

CROSS REFERENCES

Application of Workers’ Compensation Act to public officers and employees, see Sections 42‑7‑50, 42‑7‑60.

“Assigned employee” within meaning of staff leasing services agreement as within terms of Workers’ Compensation Law, see Sections 40‑68‑60 to 40‑68‑75, 40‑68‑120.

Deputy enforcement conservation officers of Natural Resources Enforcement Division not employees entitled to coverage or benefits provided in Title 42, see Section 50‑3‑315.

Labor and employment, see Section 41‑1‑10 et seq.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 101:9, Sole Proprietors/Partners.

Modern Workers’ Compensation Section 106:2, Employee Defined.

Modern Workers’ Compensation Section 106:5, Working in Employer’s Business Requirement.

Modern Workers’ Compensation Section 106:9, Aliens.

Modern Workers’ Compensation Section 321:4, Covered “Employees”.

Modern Workers’ Compensation Section 101:23, Election by Notice to Insurer.

Modern Workers’ Compensation Section 106:44, Military Personnel.

Modern Workers’ Compensation Section 106:46, Minors.

Modern Workers’ Compensation Section 106:49, Partners.

Modern Workers’ Compensation Section 106:51, Public Employees, Generally.

Modern Workers’ Compensation Section 106:63, Volunteers, Generally.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law, workers’ compensation law. 42 S.C. L. Rev. 273 (Autumn 1990).

Attorney General’s Opinions

Employees of the State Bar qualify as “employees of the State”, for purposes of the State Fund insurance coverage under Workmen’s Compensation. 1975‑76 Op.Atty.Gen., No. 4449, p 309, 1976 WL 23066.

Ambulance operators employed by a private operator pursuant to an agreement with a county, which provides the equipment and billing services, are not employees of the county, for purposes of workmen’s compensation. 1974‑75 Op.Atty.Gen., No. 4164, p 227, 1975 WL 22459.

Real Estate Board members and employees are eligible to participate in the State Workmen’s Compensation Fund as “covered employees” of a State governmental agency. 1970‑71 Op.Atty.Gen., No. 3164, p 125, 1971 WL 17539.

NOTES OF DECISIONS

In general 1

Casual employee 9

Constitutional issues 3

Construction and application 2

Contract of hire 10

Election of coverage 13

Employment relationship 4

Independent contractor 8

Jurisdiction 14

Particular occupations 12

Questions of law 15

Review 17

Statutory employee 7

Sufficiency of evidence 16

The employment contract 6

Trade or business 5

Volunteer worker 11

1. In general

No award under the Workers’ Compensation Law is authorized unless the employer‑employee or master‑servant relationship existed at the time of the alleged injury for which claim is made. Shatto v. McLeod Regional Medical Center (S.C. 2013) 406 S.C. 470, 753 S.E.2d 416, on remand 408 S.C. 595, 759 S.E.2d 443. Workers’ Compensation 233

The determination of whether a workers’ compensation claimant is an employee or independent contractor focuses on the issue of control, specifically whether the purported employer had the right to control the claimant in the performance of his work; under this common law rubric, reviewing court examines four factors which serve as a means of analyzing the work relationship as a whole: (1) direct evidence of the right or exercise of control; (2) furnishing of equipment; (3) method of payment; (4) right to fire. Shatto v. McLeod Regional Medical Center (S.C. 2013) 406 S.C. 470, 753 S.E.2d 416, on remand 408 S.C. 595, 759 S.E.2d 443. Workers’ Compensation 306

Any doubts as to a worker’s status should be resolved in favor of including him or her under the Workers’ Compensation Act. Poch v. Bayshore Concrete Products/South Carolina, Inc. (S.C. 2013) 405 S.C. 359, 747 S.E.2d 757. Workers’ Compensation 51

Coverage under Worker’s Compensation Act is typically dependent on the existence of an employer‑employee relationship; however, there are certain statutory exceptions to this general rule. Johnson v. Jackson (S.C.App. 2012) 401 S.C. 152, 735 S.E.2d 664, certiorari denied. Workers’ Compensation 233

Coverage under the Workers’ Compensation Act depends on the existence of an employment relationship. Meyer v. Piggly Wiggly No. 24, Inc. (S.C.App. 1998) 331 S.C. 261, 500 S.E.2d 190, rehearing denied, certiorari granted, affirmed 338 S.C. 471, 527 S.E.2d 761. Workers’ Compensation 233

An employee, subject with his employer to the provisions of the Workmen’s Compensation Act, whose injury arises out of, and in the course of his employment, cannot maintain an action at common law against his coemployee, whose negligence caused the injury. Young v. Warr (S.C. 1969) 252 S.C. 179, 165 S.E.2d 797. Workers’ Compensation 2168.1(2)

Because plaintiff’s employment was under workmen’s compensation, he could not have sued his employer in tort either alone or jointly with defendant; but that circumstance did not deprive him of his right to sue defendant alone. Bridges v. Wyandotte Worsted Co. (S.C. 1961) 239 S.C. 37, 121 S.E.2d 300. Workers’ Compensation 2224

There is no common‑law cause of action on the part of the employee against the employer for an assault by a fellow servant or employee, so the holding that injuries resulting therefrom are compensable under the terms of the Workmen’s Compensation Act is favorable to employees and is a logical extension of the beneficent provisions of the law and a serving of the purpose to include employees within its benefits rather than exclude them. Thompson v. J.A. Jones Const. Co. (S.C. 1942) 199 S.C. 304, 19 S.E.2d 226.

The very purpose of the Act is to assure the employee of redress for his injuries, if the facts show that he is entitled thereto, and to relieve him of the uncertainties of a trial in a suit for damages. Riddle v. Fairforest Finishing Co. (S.C. 1942) 198 S.C. 419, 18 S.E.2d 341.

It is a form of social legislation passed primarily for the benefit of the employee, and to prevent the burden of injured employees becoming charges upon society. McDonald v. Palmetto Theaters (S.C. 1940) 196 S.C. 38, 11 S.E.2d 444.

The purpose of this section [Code 1962 Section 72‑11] is to make the “owner,” the person who is interested in having the work done, liable to the employee so injured. Marchbanks v. Duke Power Co. (S.C. 1939) 190 S.C. 336, 2 S.E.2d 825.

2. Construction and application

The basic purpose of the Workmen’s Compensation Act is inclusion of employers and employees and not their exclusion, and doubts of jurisdiction must be resolved in favor of inclusion rather than exclusion. Horton v Baruch (1950) 217 SC 48, 59 SE2d 545. DeBerry v Coker Freight Lines (1959) 234 SC 304, 108 SE2d 114. Brown v Morehead Oil Co. (1962) 239 SC 604, 124 SE2d 47. Pyett v Marsh Plywood Corp. (1962) 240 SC 56, 124 SE2d 617.

The basic purpose of this Title is inclusion of employers and employees, and not their exclusion, and its presumptions and its penalties are directed toward the end of effecting coverage rather than noncoverage. Ham v Mullins Lumber Co. (1940) 193 SC 66, 7 SE2d 712. Yeomans v Anheuser‑Busch, Inc. (1941) 198 SC 65, 15 SE2d 833, 136 ALR 894. Simpkins v Lumbermens Mut. Casualty Co. (1942) 200 SC 228, 20 SE2d 733. Alewine v Tobin Quarries, Inc. (1945) 206 SC 103, 33 SE2d 81. Kennerly v Ocmulgee Lumber Co. (1945) 206 SC 481, 34 SE2d 792. Gordon v Hollywood‑Beaufort Package Corp. (1948) 213 SC 438, 49 SE2d 718. Holland v Georgia Hardwood Lumber Co. (1949) 214 SC 195, 51 SE2d 744. Cagle v Clinton Cotton Mills (1949) 216 SC 93, 56 SE2d 747.

But it must not be construed so as to work a hardship on the employer and the carrier by the interpolation of words or conditions not found in the Act. Hill v Skinner (1940) 195 SC 330, 11 SE2d 386. Holland v Georgia Hardwood Lumber Co. (1949) 214 SC 195, 51 SE2d 744.

The court is committed to a liberal construction of the Compensation Act to include injured workmen within its protection rather than exclude them. Cagle v Clinton Cottom Mills (1949) 216 SC 93, 56 SE2d 747. Bailey v Santee River Hardwood Co. (1944) 205 SC 433, 32 SE2d 365.

This statute is to be construed liberally for the protection of the injured employee ‑ to promote the purpose of its enactment. Murdaugh v Robert Lee Const. Co. (1937) 185 SC 497, 194 SE 447. Ham v Mullins Lbr. Co. (1940) 193 SC 66, 7 SE2d 712. Cokely v Robert Lee, Inc. (1941) 197 SC 157, 14 SE2d 889. Pate v Plymouth Mfg. Co. (1941) 198 SC 159, 17 SE2d 146.

Person is performing trade, business or occupation of owner if he is engaged in work that is essential to function of employer’s business, even if employer never performs that particular work with its own employees; employee of independent electrical contractor injured while engaged in repairing electrical system of grain dryer is statutory employee. Smith v. FCX, Inc. (C.A.4 (S.C.) 1984) 744 F.2d 1378, certiorari denied 105 S.Ct. 2330, 471 U.S. 1103, 85 L.Ed.2d 848.

Basic purpose of this Title is inclusion of employers and employees and not their exclusion. MacMullen v. South Carolina Elec. & Gas Co. (C.A.4 (S.C.) 1963) 312 F.2d 662, certiorari denied 83 S.Ct. 1302, 373 U.S. 912, 10 L.Ed.2d 413. Workers’ Compensation 186; Workers’ Compensation 230

While doubts about the reach of the Workers’ Compensation Act are to be resolved in favor of including workers, courts are bound by the Act as written and do not have the power to expand its scope. Meyer v. Piggly Wiggly No. 24, Inc. (S.C.App. 1998) 331 S.C. 261, 500 S.E.2d 190, rehearing denied, certiorari granted, affirmed 338 S.C. 471, 527 S.E.2d 761. Workers’ Compensation 53

A construction should not be adopted that does violence to the specific provisions of the Act. Pyett v. Marsh Plywood Corp. (S.C. 1962) 240 S.C. 56, 124 S.E.2d 617.

Yet the courts are without authority to enlarge the meaning of the terms used by the legislature or to extend by construction its scope and intent so as to include persons not embraced by its terms; and one who seeks to avail himself of the Act must come within its terms. McDowell v. Stilley Plywood Co. (S.C. 1947) 210 S.C. 173, 41 S.E.2d 872.

3. Constitutional issues

Immigration Reform and Control Act, which prohibits the hiring of unauthorized aliens, does not preempt state law permitting illegal alien to recover workers compensation; the Act does not expressly preclude an illegal alien from being considered an employee for workers’ compensation benefits, and allowing benefits for injured illegal alien workers does not conflict with the policy against hiring them. Curiel v. Environmental Management Services (MS) (S.C. 2007) 376 S.C. 23, 655 S.E.2d 482. States 18.47; Workers’ Compensation 93.5

4. Employment relationship

Local mover who injured his right shoulder, hand, arm, and knee while working for moving company was not an “employee” of moving company and, thus, was not entitled to workers’ compensation; local mover worked for moving company part‑time helping load and unload trucks rented by moving company’s customers, moving company did not exercise control over work local mover performed, but rather merely gave local mover customer’s information, and when job was completed, moving company gave local mover cash for entire cost of job. Ferguson v. New Hampshire Ins. Co. (S.C.App. 2015) 412 S.C. 203, 771 S.E.2d 851, rehearing denied, certiorari denied. Workers’ Compensation 331

Workers’ compensation claimant who was injured by an errant bullet while working as an exotic dancer was nightclub’s “employee” rather than an independent contractor, and thus claimant was entitled to benefits, even though club did not directly pay claimant’s earnings and instead facilitated payments she received from customers; club exercised significant control over performance of claimant’s work once it engaged her for the evening, club supplied necessary performance space and bore risk of capital investment in equipment claimant used to perform her work, and club had right to terminate claimant prior to the end of her shift without risk of repercussions. Lewis v. L.B. Dynasty (S.C. 2015) 411 S.C. 637, 770 S.E.2d 393, rehearing denied, on remand 2015 WL 4137999. Workers’ Compensation 339

While evidence of actual control exerted by a putative employer is evidence of an employment relationship, in context of determining whether a workers’ compensation claimant is an employee or an independent contractor, the critical inquiry is whether there exists the right and authority to control and direct the particular work or undertaking. Shatto v. McLeod Regional Medical Center (S.C. 2013) 406 S.C. 470, 753 S.E.2d 416, on remand 408 S.C. 595, 759 S.E.2d 443. Workers’ Compensation 306

Workers’ compensation awards are authorized only if an employer‑employee relationship exists at the time of the injury. Edens v. Bellini (S.C.App. 2004) 359 S.C. 433, 597 S.E.2d 863. Workers’ Compensation 233

Fundamental test of employment relationship is the right of employer to control details of employee’s work for purposes of determining whether individual is employee or independent contractor for workers’ compensation purposes; it is not actual control exercised, but whether there exists right and authority to control and direct the particular work or undertaking as to the manner or means of its accomplishment. Nelson v. Yellow Cab Co. (S.C.App. 2000) 343 S.C. 102, 538 S.E.2d 276, rehearing denied, certiorari granted, affirmed 349 S.C. 589, 564 S.E.2d 110. Workers’ Compensation 307

Workers’ compensation award is authorized only if employer‑employee relationship existed at time of alleged injury, and issue of whether subsequent reinstatement of employee with original effective service date meant that he never left employment of company, and therefore his claim of outrageous conduct arose in course of his employment, is issue of fact. Nash v. AT & T Nassau Metals (S.C.App. 1987) 294 S.C. 248, 363 S.E.2d 695, reversed 298 S.C. 428, 381 S.E.2d 206.

Resolution of the question as to whether an injured worker is an employee or subcontractor depends on whether the employing organization has the right and authority to control and direct the particular work or undertaking being performed by the worker as to either the manner or means of its accomplishment, and there are 4 factors to determine the right of control which are (1) direct evidence of the right to or exercise of control, (2) method of payment, (3) furnishing of equipment, and (4) right to fire. Crim v. Decorator’s Supply (S.C.App. 1987) 291 S.C. 193, 352 S.E.2d 520.

Since it is employment relationship which gives rise to liability for and right to compensation, where prisoner entered into private contract of hire with employee and was indistinguishable from any other employee, prisoner transcended his status and became private employee entitled to workmen’s compensation benefits. Hamilton v. Daniel Intern. Corp. (S.C. 1979) 273 S.C. 409, 257 S.E.2d 157.

Four factors bearing on the crucial right of control are (1) direct evidence of the right to, or exercise of control, (2) method of payment, (3) furnishing of equipment, and (4) right to fire. Chavis v. Watkins (S.C. 1971) 256 S.C. 30, 180 S.E.2d 648.

The general test of control by the employer is not the actual control then exercised, but whether there exists the right and authority to control and direct the particular work or undertaking, as to the manner or means of its accomplishment. Chavis v. Watkins (S.C. 1971) 256 S.C. 30, 180 S.E.2d 648.

In determining whether a person is an employee within the meaning of this section [Code 1962 Section 72‑11], the test is the right of control. Four factors which are well‑established tests of the right of control are (1) direct evidence of right to or exercise of control, (2) method of payment, (3) furnishing of equipment and (4) right to fire. The power to fire, it is often said, is the power to control. The absolute right to terminate the relationship without liability is not consistent with the concept of independent contract, under which the contractor should have the legal right to complete the project contracted for and to treat any attempt to prevent completion as a breach of contract. Tharpe v. G. E. Moore Co. (S.C. 1970) 254 S.C. 196, 174 S.E.2d 397.

In determining whether an injured person was an employee or an independent contractor, the general test applied is that of control by the employer. It is not the actual control then exercised, but whether there exists the right and authority to control and direct the particular work or undertaking, as to the manner or means of its accomplishment. Tharpe v. G. E. Moore Co. (S.C. 1970) 254 S.C. 196, 174 S.E.2d 397.

The reserved control, to have the effect of making the relation that of employer and employee, must be both general and special, and not only as to what work shall be done, but also how it shall be done. Young v. Warr (S.C. 1969) 252 S.C. 179, 165 S.E.2d 797.

The mere fact that one of the contracting parties is empowered to give general directions as to what is to be done without control of the method or means of doing it does not necessarily have the effect of creating the relation of principal and agent or master and servant because such relates only to the result to be attained. Young v. Warr (S.C. 1969) 252 S.C. 179, 165 S.E.2d 797. Labor And Employment 29; Principal And Agent 3(2)

Whether the alleged employer reserved the right to refuse to give a truckman further work if he disobeyed traffic rules had no substantial evidentiary value in determining whether employer‑employee relation existed. Young v. Warr (S.C. 1969) 252 S.C. 179, 165 S.E.2d 797.

The right or power of control retained by the person for whom the work is being done is uniformly regarded as the essential criterion for determining whether the workman is an employee or an independent contractor. De Berry v. Coker Freight Lines (S.C. 1959) 234 S.C. 304, 108 S.E.2d 114. Workers’ Compensation 307

No award under this Act is authorized unless the employer‑employee relationship existed at the time of the alleged injury for which claim is made. Alewine v. Tobin Quarries (S.C. 1945) 206 S.C. 103, 33 S.E.2d 81. Workers’ Compensation 233

5. Trade or business

A person who is injured while working for another is not limited to relief provided in the Workmen’s Compensation Law if he was not engaged in work which was a part of the usual trade, business or occupation of his employer. MacMullen v. South Carolina Elec. & Gas Co., 1961, 205 F.Supp. 811, reversed 312 F.2d 662, certiorari denied 83 S.Ct. 1302, 373 U.S. 912, 10 L.Ed.2d 413.

Worker’s Compensation Act did not provide exclusive remedy for worker injured while employed by a subcontractor to install an electrical system for a plant being constructed for a manufacturer by a general contractor, since the electrical installation was not part of the trade or business of the manufacturer which was in the business of manufacturing and selling of batteries and related products and, although the manufacturer had been involved in the construction of numerous facilities on property which it owned or leased and managed, the manufacturer did not have a construction division and none of the construction work was performed by its regular employees but, rather, the manufacturer merely prepared the specific designs for certain parts of the facilities, or oversaw such designs, approved engineering plans and, in some instances, provided supervisory personnel to provide general assistance in the contracting of the contractors and subcontractors and of coordinating their activities. Raines v. Gould, Inc. (S.C.App. 1986) 288 S.C. 541, 343 S.E.2d 655.

Ordinarily, in determining worker’s compensation employee‑employer relationship, construction work, such as building a factory structure or making electrical installations, is considered outside the trade or business of a manufacturer. Raines v. Gould, Inc. (S.C.App. 1986) 288 S.C. 541, 343 S.E.2d 655. Workers’ Compensation 354

If a business by its size and nature is accustomed to carrying on a more or less ongoing program of construction, perhaps having a construction division, or has handled its own construction in the past, then, in determining the existence of a workers compensation employer‑employee relationship, construction work delegated to a contractor may be considered a part of its trade or business. Raines v. Gould, Inc. (S.C.App. 1986) 288 S.C. 541, 343 S.E.2d 655. Workers’ Compensation 355

6. The employment contract

An employee’s willful false statement in his application for a job as a “material handler,” indicating that he had no previous injuries or physical impairments, barred recovery of workers’ compensation benefits since the job of material handler consisted of lifting and moving boxes weighing 100 to 300 pounds, the employer substantially relied on the employee’s misrepresentations when it decided to hire him, and a causal relationship existed between the employee’s false representation and his injury; under the circumstances, no employer‑employee relationship existed. Small v. Oneita Industries (S.C.App. 1994) 314 S.C. 198, 442 S.E.2d 213, rehearing denied, certiorari granted, affirmed 318 S.C. 553, 459 S.E.2d 306.

Employment, like any other contract, presupposes understanding. The new relation cannot be thrust upon the servant without knowledge or consent. Chavis v. Watkins (S.C. 1971) 256 S.C. 30, 180 S.E.2d 648.

The burden rested upon the regular employer to show that a change in the identity of the claimant’s employer was made known to the claimant. Chavis v. Watkins (S.C. 1971) 256 S.C. 30, 180 S.E.2d 648.

Unless claimant knew of and agreed to a new employer‑employee relationship replacing the one theretofore existing, his rights under the Workmen’s Compensation Act against his regular employer were unabridged. Chavis v. Watkins (S.C. 1971) 256 S.C. 30, 180 S.E.2d 648.

The issue of whether the claimant was an employee at the time he was injured was jurisdictional. Chavis v. Watkins (S.C. 1971) 256 S.C. 30, 180 S.E.2d 648.

Thus, the Commission’s conclusion was subject to judicial review even though supported by evidence. Chavis v. Watkins (S.C. 1971) 256 S.C. 30, 180 S.E.2d 648.

The belief of the parties to the contract as to whether the relationship between them is that of employer and employee or is that of independent contractor, as indicated by their actions, is entitled to some weight in determining the nature of the relationship. Young v. Warr (S.C. 1969) 252 S.C. 179, 165 S.E.2d 797.

The test in determining whether a person is an employee within the meaning of this section [Code 1962 Section 72‑11] or an independent contractor is that of control, he being an employee if he is subject to the control of the party for whom the work is done, and an independent contractor if he is not. Whether or not the employer has the right of control is to be determined from the contract of employment. Carter’s Dependents v. Palmetto State Life Ins. Co. (S.C. 1946) 209 S.C. 67, 38 S.E.2d 905.

The relationship of employer‑employee is contractual in character and to constitute one an employee it is essential that there shall be a contract of service. However, no formality is required. The contract may be oral or written. It may be accomplished with a few words, or it may be implied from conduct without words. It is sufficient if the circumstances show unequivocally that the parties recognize each other as employer and employee. Alewine v. Tobin Quarries (S.C. 1945) 206 S.C. 103, 33 S.E.2d 81. Workers’ Compensation 234

The hiring, or contract for employment, is the jurisdictional factor and not the actual commencement of work thereunder. Alewine v. Tobin Quarries (S.C. 1945) 206 S.C. 103, 33 S.E.2d 81. Workers’ Compensation 248

7. Statutory employee

An employee of a subcontractor was a statutory employee pursuant to Section 42‑1‑400, where the trucking of goods from manufacturers plant to its customers is an essential and important part of the manufacturer’s trade and a necessary and integral part of its business; the driver, an employee of the subcontractor, was involved in the transportation of goods from the manufacturer’s plant to the manufacturer’s customers. Furthermore, the owner has in the past equipped, managed, maintained and run its own trucking division. Carrier v. Westvaco Corp., 1992, 806 F.Supp. 1242, affirmed 46 F.3d 1122.

For purposes of exclusive remedy provision (Section 42‑1‑540), a truck driver, who worked for independent carrier used by manufacturer, was “statutory employee” of manufacturer, where driver was injured while standing on concrete pier waiting for his truck to be loaded at manufacturer’s plant, and where, prior to using contract‑type carriers for the transportation of its goods to customers, manufacturer had equipped and maintained its own trucking division. Carrier v. Westvaco Corp., 1992, 806 F.Supp. 1242, affirmed 46 F.3d 1122. Workers’ Compensation 331

An employee of a subcontractor was a statutory employee pursuant to Section 42‑1‑400, where the trucking of goods from manufacturers plant to its customers is an essential and important part of the manufacturer’s trade and a necessary and integral part of its business; the driver, an employee of the subcontractor, was involved in the transportation of goods from the manufacturer’s plant to the manufacturer’s customers. Furthermore, the owner has in the past equipped, managed, maintained and run its own trucking division. Carrier v. Westvaco Corp., 1992, 806 F.Supp. 1242, affirmed 46 F.3d 1122.

An electrician employed by an independent contractor was a “statutory employee” of a textile company within the meaning of Section 42‑1‑130 by performing part of the trade, business or occupation of the textile company at the time of his accident, and thus his sole remedy was under the provisions of the South Carolina Worker’s Compensation Law, where he was repairing power lines of the textile company at the time of his accident, and the repair and maintenance of the electrical system was a normal part of the company’s operation and essential to the company’s continued functioning. Moreover, employment is “casual,” and thus outside the purview of the Worker’s Compensation Law when it is not permanent or periodically regular but occasional or by chance and not in the ordinary course of the employer’s trade or business. Accordingly, in determining whether the electrician was a statutory or casual employee of the textile company, the electrician could not, as an agent of the independent contractor engaged to repair the company’s electrical lines, divorce himself from the continued relationship which the independent contractor had with the company prior to and subsequent to the date of his injury. Singleton v. J. P. Stevens & Co., Inc. (D.C.S.C. 1982) 533 F.Supp. 887, affirmed 726 F.2d 1011.

Truck driver who was injured while transporting utility poles was not a statutory employee of utility pole manufacturer, and thus his tort action against manufacturer was not barred by exclusivity provision of Workers’ Compensation Act; truck was loaded by manufacturer’s employees, and truck was not owned or operated by manufacturer. Olmstead v. Shakespeare (S.C.App. 2002) 348 S.C. 436, 559 S.E.2d 370, rehearing denied, certiorari granted, affirmed as modified 354 S.C. 421, 581 S.E.2d 483. Workers’ Compensation 2158

The surviving spouse of a truck driver killed while hauling lumber sufficiently alleged that he was a statutory employee of the contractor who had hired him to haul lumber as an independent contractor where, on her claim for workers’ compensation benefits, she alleged that he was an employee of the contractor. Smith v. Squires Timber Co. (S.C. 1993) 311 S.C. 321, 428 S.E.2d 878, rehearing denied.

An employee was the statutory employee of a textile mill where the employee, who was employed by a company hired to install certain machinery at the textile mill, was killed while installing the machinery and testimony indicated that (1) the mill’s employees had previously installed the machinery, (2) the machinery was essential to the mill’s manufacture of certain materials, and (3) the mill was able to continue its usual operation while the machinery was being installed; thus, installing the machinery was an integral part of the mill’s general trade. Gentry v. Milliken & Co. (S.C.App. 1992) 307 S.C. 235, 414 S.E.2d 180. Workers’ Compensation 291

The circuit court was not precluded from finding that an employee, who was killed while installing machinery at a textile mill, was the statutory employee of the mill even though the Industrial Commission had already found that the employee was an employee of the independent contractor hired by the mill to install the machinery; thus, the employee’s surviving spouse was barred from bringing a wrongful death action against either the independent contractor or the mill. Gentry v. Milliken & Co. (S.C.App. 1992) 307 S.C. 235, 414 S.E.2d 180.

In determining whether an employee who bears no contractual relationship to an owner is, through employment by another person, the owner’s “statutory employee,” the test is “whether or not [the work] being done is or is not a part of the general trade, business or occupation of the owner.” The employee is to be included or excluded as a “statutory employee” depending on whether or not the person is performing or executing a part of the owner’s general business. Since there is no general rule for determining whether the work in a given case satisfies the prescribed test, each case must be decided on its own facts. However, doubts concerning the application of the prescribed test must be resolved in favor of inclusion of employers and employees under the Workers’ Compensation Act. Revels v. Hoechst Celanese Corp. (S.C.App. 1990) 301 S.C. 316, 391 S.E.2d 731.

An employee of a transport company was a “statutory employee” of a chemical distributor when he was injured at the distributor’s distribution terminal while assisting in the loading of chemicals into the transport company’s tanker. The work being performed by the employee ‑ checking the levels of the chemicals being loaded into the tanker ‑ was a part of the chemical distributor’s general business. The distribution of chemicals necessarily involves their transportation, and before they can be transported the chemicals must first be pumped or loaded into tankers. The loading of chemicals into a tanker requires that someone monitor the amount of chemicals being pumped into the tanker’s compartments, the very work that the employee was performing when he received his injuries. By engaging in that activity, the employee participated in the loading operation, which is an activity that normally involves an employee of the distributor, and in so doing, the employee performed work that was part of the distributor’s general business and its obvious routine. Revels v. Hoechst Celanese Corp. (S.C.App. 1990) 301 S.C. 316, 391 S.E.2d 731.

“Upstream” subcontractors were statutory employers of an employee of a sub‑sub‑contractor under the Workers’ Compensation Act, and thus were immune from tort liability. Brittingham v. Williams Sign Erectors, Inc. (S.C.App. 1989) 299 S.C. 259, 384 S.E.2d 319. Workers’ Compensation 350

In determining whether the claim of a subcontractor’s employee is within the exclusive jurisdiction of the workers’ compensation laws, the basic test is whether or not the work being done is a part of the general trade, business or occupation of the owner; this is true even though the subcontractor might occupy the status of independent contractor. In determining whether a claimant is a statutory employee, the relevant focuses are (1) whether the activity is an important part of the trade or business, (2) whether the activity is a necessary, essential and integral part of the business, and (3) whether the identical activity in question has been performed by employees of the principal employer. Bailey v. Owen Elec. Steel Co. of South Carolina, Inc. (S.C.App. 1989) 298 S.C. 36, 378 S.E.2d 63, reversed 301 S.C. 399, 392 S.E.2d 186.

8. Independent contractor

Determination of whether a workers’ compensation claimant is an employee or independent contractor focuses on issue of control, specifically whether purported employer had right to control claimant in performance of his work. Ferguson v. New Hampshire Ins. Co. (S.C.App. 2015) 412 S.C. 203, 771 S.E.2d 851, rehearing denied, certiorari denied. Workers’ Compensation 306

In evaluating whether a purported employer had a right to control a workers’ compensation claimant in performance of his work, for purpose of determining whether claimant is an employee or an independent contractor, Supreme Court examines four factors which serve as a means of analyzing work relationship as a whole: (1) direct evidence of right or exercise of control; (2) furnishing of equipment; (3) method of payment; and (4) right to fire. Ferguson v. New Hampshire Ins. Co. (S.C.App. 2015) 412 S.C. 203, 771 S.E.2d 851, rehearing denied, certiorari denied. Workers’ Compensation 306

In the absence of a statutory provision to the contrary, an injured person who is not an employee, but an independent contractor, is not within the scope of the Workers’ Compensation Act. Tillotson v. Keith Smith Builders (S.C.App. 2004) 357 S.C. 554, 593 S.E.2d 621, rehearing denied, certiorari dismissed as improvidently granted 366 S.C. 334, 621 S.E.2d 889. Workers’ Compensation 304

Taxicab driver was an “employee” of taxicab company, as jurisdictional requirement for receipt of workers’ compensation benefits by driver’s estate, rather than an “independent contractor,” when he was murdered, apparently by a passenger; company had the right to terminate and discipline the driver for a number of reasons and company had the right to control the method and means of driver’s operation of the taxicab, although company had little control over driver’s discretion to determine when he would work and where he would drive the taxicab, and although driver leased the taxicab from the company on per‑diem basis and driver generally was entitled to keep the fares. Nelson v. Yellow Cab Co. (S.C. 2002) 349 S.C. 589, 564 S.E.2d 110, rehearing denied. Workers’ Compensation 332

In determining whether a claimant is an employee or independent contractor for workers’ compensation purposes, the general test is whether the alleged employer has the right and authority to control and direct the particular work or undertaking, as to the manner or means of its accomplishment. South Carolina Workers’ Compensation Com’n v. Ray Covington Realtors, Inc. (S.C. 1995) 318 S.C. 546, 459 S.E.2d 302, rehearing denied. Workers’ Compensation 306

The determination of whether a claimant is an employee or independent contractor for workers’ compensation purposes is a jurisdictional question; thus, the Supreme Court can take its own view of the preponderance of the evidence. South Carolina Workers’ Compensation Com’n v. Ray Covington Realtors, Inc. (S.C. 1995) 318 S.C. 546, 459 S.E.2d 302, rehearing denied. Workers’ Compensation 1939.11(3)

In an action to ascertain whether a claimant is an employee or independent contractor under workers’ compensation, the court looks to 4 factors in determining the control issue: (1) direct evidence of the right or exercise of control, (2) the method of payment, (3) the furnishing of equipment, and (4) the right to fire. South Carolina Workers’ Compensation Com’n v. Ray Covington Realtors, Inc. (S.C. 1995) 318 S.C. 546, 459 S.E.2d 302, rehearing denied. Workers’ Compensation 306

The claimant, a real estate sales person, was not the employee of his broker where (1) the broker supplied claimant with a desk and business forms, (2) claimant did not need the brokers’ approval for listing agreements, (3) the claimant had to pay for his own advertising, his multiple listing books, and his errors and omissions insurance, (4) all proceeds from any sale the claimant made were given to the broker, who then gave the claimant his commission, (5) the claimant made his own schedule and did not need to ask for time off except that, on most Wednesdays, he was required to attend a staff meeting, and on some weekends he was asked to host an open house, (6) the claimant received neither paid vacation days nor paid sick leave, (7) the claimant was not paid unless he earned a commission, and nothing was withheld from his check, (8) the claimant received a form 1099 rather than a W‑2 form from the broker, (9) with the broker’s knowledge, the claimant sold car phones on the side, (10) the claimant testified that the defendant could fire him if he wanted to. South Carolina Workers’ Compensation Com’n v. Ray Covington Realtors, Inc. (S.C. 1995) 318 S.C. 546, 459 S.E.2d 302, rehearing denied.

Whether a real estate sales person is his broker’s employee or an independent contractor is a fact‑specific determination reached by applying certain general principles. South Carolina Workers’ Compensation Com’n v. Ray Covington Realtors, Inc. (S.C. 1995) 318 S.C. 546, 459 S.E.2d 302, rehearing denied. Workers’ Compensation 305

An official who broke his leg while officiating at a high school football game was an independent contractor, rather that an employee, and thus was not entitled to workers’ compensation benefits where neither the school, the football league, nor the official’s association had any right to direct him in the work of officiating the game. Farrar v. D.W. Daniel High School (S.C.App. 1992) 309 S.C. 523, 424 S.E.2d 543.

An independent contractor is one who, exercising an independent employment, contracts to do a piece of work according to his own methods, without being subject to the control of his employer except as to the result of his work. Chavis v. Watkins (S.C. 1971) 256 S.C. 30, 180 S.E.2d 648.

An independent contractor is one who, exercising an independent employment, contracts to do a piece of work according to his own methods, without being subject to the control of his employer except as to the result of his work. Tharpe v. G. E. Moore Co. (S.C. 1970) 254 S.C. 196, 174 S.E.2d 397.

Where the evidence relating to an independent contractor or employee is conflicting, or if not conflicting, where more than one inference can be derived therefrom, the question is one of fact. Young v. Warr (S.C. 1969) 252 S.C. 179, 165 S.E.2d 797. Labor And Employment 58

In the absence of a statutory provision to the contrary, an injured person who is not an employee, but an independent contractor for the work, is not within the scope of the Workmen’s Compensation Act; and when it appears that the parties have contracted for the performance of work under circumstances which the courts have determined constitute the work of an independent contractor, an industrial commission has no further powers, and must dismiss the claim. Even though the contract is unfair to the worker and a studied attempt to avoid the provisions of the Act, it bars his claim to compensation if it makes him an independent contractor; and a worker has a right to make such a contract. Young v. Warr (S.C. 1969) 252 S.C. 179, 165 S.E.2d 797.

Where a written contract defined the carrier’s status as an independent contractor, the mere posting of notice not to exceed the legal speed limit, although the company might exercise the right to terminate the contract if the directions were not complied with, was not an exercise of control but only a direction not to do a thing the carrier had no right to do. Young v. Warr (S.C. 1969) 252 S.C. 179, 165 S.E.2d 797.

The issuance of safety regulations by a lumber company to an independent contractor operating log trucks could not be regarded as the giving of directions so as to change their status to that of servants. Young v. Warr (S.C. 1969) 252 S.C. 179, 165 S.E.2d 797.

9. Casual employee

A casual employee is excluded although the work being done is in the course of his employer’s business or occupation. Benbow v Edmunds High School (1951) 220 SC 363, 67 SE2d 680. Smith v Coastal Tire & Auto Service (1974) 263 SC 77, 207 SE2d 810.

This section [Code 1962 Section 72‑11] and Code 1962 Section 72‑107 are not in conflict as to casual employees. They both exclude them from the Act. Jolly v Atlantic Greyhound Corp. (1945) 207 SC 1, 35 SE2d 42. DeBerry v Coker Freight Lines (1959) 234 SC 304, 108 SE2d 114.

Or because it is not for any specified length of time, or because the injury occurs shortly after the employee begins work. Ward v Ocean Forest Club, Inc. (1938) 188 SC 233, 198 SE 385. DeBerry v Coker Freight Lines (1959) 234 SC 304, 108 SE2d 114.

Employee doing something for sub‑contractor which bore some reasonably direct relation to performance of work undertaken by contractor is not a casual employee and comes within coverage of this Title. MacMullen v. South Carolina Elec. & Gas Co. (C.A.4 (S.C.) 1963) 312 F.2d 662, certiorari denied 83 S.Ct. 1302, 373 U.S. 912, 10 L.Ed.2d 413.

Where the work being performed by an employee of a subcontractor was part of the trade, business, profession or occupation of owner, it is not necessary to consider whether employee’s employment was casual since for an employee to be excluded under the act, his employment must be both casual and not in the trade, business, profession or occupation of his employer. Carrier v. Westvaco Corp., 1992, 806 F.Supp. 1242, affirmed 46 F.3d 1122.

For casual employee to be excluded from coverage of Workmen’s Compensation Law as provided under Section 42‑1‑130, work being done by employee must be both casual and not in trade, business, profession or occupation of employer; thus, truck driver who was injured while waiting for his truck to be loaded at manufacturer’s plant was not subject to exclusion as casual employee, where work being performed by driver was part of the trade, business, profession or occupation of employer, and where driver’s employment through carrier regularly used by manufacturer was arguably more than strictly chance employment. Carrier v. Westvaco Corp., 1992, 806 F.Supp. 1242, affirmed 46 F.3d 1122.

Employment is casual when not permanent or periodically regular but occasional or by chance and not a usual course of employer’s trade or business. Singleton v. J. P. Stevens & Co., Inc. (D.C.S.C. 1982) 533 F.Supp. 887, affirmed 726 F.2d 1011. Workers’ Compensation 263

Temporary worker who was injured while packaging and loading equipment for transportation company was not a “casual” employee under Workers’ Compensation Act, and thus the Act provided worker’s exclusive remedy against transportation company; even though worker’s employment was neither permanent nor continuous, employment was in the course of transportation company’s business. Johnson v. Jackson (S.C.App. 2012) 401 S.C. 152, 735 S.E.2d 664, certiorari denied. Workers’ Compensation 268

When employment cannot be characterized as permanent or periodically regular, but occurs by chance, or with the intent and understanding of both employer and employee that it shall not be continuous, it is “casual”under the Workers’ Compensation Act. Johnson v. Jackson (S.C.App. 2012) 401 S.C. 152, 735 S.E.2d 664, certiorari denied. Workers’ Compensation 268

In determining whether an employee is a casual employee and therefore excluded form coverage under the Workers’ Compensation Act, Section 42‑1‑400 et seq., the court must consider whether (1) the employee’s work for the employer was casual, and (2) the employee was performing work for the employer that was not in the course of the employer’s trade, business, profession or occupation. Riden v. Kemet Electronics Corp. (S.C.App. 1993) 313 S.C. 261, 437 S.E.2d 156.

An employee will be excluded from receiving workers’ compensation benefits pursuant to Section 42‑1‑130 only if his work was casual and not in the course of the employer’s business. Riden v. Kemet Electronics Corp. (S.C.App. 1993) 313 S.C. 261, 437 S.E.2d 156.

The exclusion from coverage of casual employees applies where liability is asserted under Section 42‑1‑400. Hairston v. Re: Leasing, Inc. (S.C.App. 1985) 286 S.C. 493, 334 S.E.2d 825.

A truck driver was not excluded from coverage as a “casual” employee of a car leasing company and a new car dealership under Section 42‑1‑130 where the driver was a regular employee of a trucking company under contract to pick up and transport vehicles, there was no intention or understanding that the driver’s employment should not be continuous, and the driver was killed on only his second trip for the car leasing company and the new car dealership, leaving it uncertain how many other trips he might have made. Hairston v. Re: Leasing, Inc. (S.C.App. 1985) 286 S.C. 493, 334 S.E.2d 825.

Employee is not “casual employee”, notwithstanding that he only works 3 or 4 months each year to avoid exceeding maximum earnings allowed without penalty for social security recipients. Bennett v. Gary Smith Builders (S.C. 1978) 271 S.C. 94, 245 S.E.2d 129.

Where worker sought benefits under Workmen’s Compensation Act, but owned his own equipment and did private contract work, and his practice was to submit bids for jobs and if accepted, to do the work himself, and was employed for a brief period by state commission with the intention and understanding that he would be a substitute for portions of 2 days, the employment of the claimant was at best casual employment and he was excluded from coverage under the Act. Privette v. South Carolina State Forestry Commission (S.C. 1975) 265 S.C. 117, 217 S.E.2d 25.

Employment is “casual” when it is irregular, unpredictable, sporadic and brief in nature. Smith v. Coastal Tire and Auto Service (S.C. 1974) 263 S.C. 77, 207 S.E.2d 810.

Where employment cannot be characterized as permanent or periodically regular, but occurs by chance, or with the intention and understanding on the part of both employer and employee that it shall not be continuous, it is casual. Smith v. Coastal Tire and Auto Service (S.C. 1974) 263 S.C. 77, 207 S.E.2d 810. Workers’ Compensation 263

Where the employer had no control as to when and how long the claimant would work, and when claimant did work, it was at uncertain times and irregular intervals and only for a short period of time, claimant is a casual employee, and he is not entitled to benefits under the Workmen’s Compensation Act. Smith v. Coastal Tire and Auto Service (S.C. 1974) 263 S.C. 77, 207 S.E.2d 810.

Where claimant, a 16 year old boy, and had no specified days or time when he was required to report for work and could show up as he pleased and work as long as he pleased, he was a casual employee and was not entitled to workmen’s compensation benefits. Smith v. Coastal Tire and Auto Service (S.C. 1974) 263 S.C. 77, 207 S.E.2d 810. Workers’ Compensation 268

An employment is not rendered casual simply because there is no definite agreement as to compensation, for in the absence of such agreement, the law will imply that the employee is to be paid a reasonable amount. Ward v. Ocean Forest Club (S.C. 1938) 188 S.C. 233, 198 S.E. 385.

The meaning of the word “casual” is something which happens by chance; and an employment is not casual ‑ that is, arising through accident or chance ‑ where one is employed to do a particular part of a service recurring somewhat regularly with the fair expectation of its continuance for a reasonable period. Ward v. Ocean Forest Club (S.C. 1938) 188 S.C. 233, 198 S.E. 385. Workers’ Compensation 266

10. Contract of hire

To be considered an employee under a contract of hire, as required for eligibility for workers’ compensation benefits, a person must have a right to payment for his services. Simmons v. SC STRONG (S.C.App. 2013) 402 S.C. 166, 739 S.E.2d 631, rehearing denied, certiorari denied. Workers’ Compensation 237

The phrase “contract of hire” in Section 42‑1‑130 connotes payment and a worker who neither receives nor expects payment for his or her services is not generally considered an employee within the definition. Thus, a volunteer who donated his labor in the construction of a church was not an employee under the workers’ compensation law, and therefore the Workers’ Compensation Commission did not have subject matter jurisdiction over his claims, where there was no evidence that he was paid wages or had a right to demand payment, and there was no evidence that he had entered into a tithing agreement with the church so that his work could be considered as a credit toward his tithe obligation. McCreery v. Covenant Presbyterian Church (S.C.App. 1989) 299 S.C. 218, 383 S.E.2d 264, reversed 303 S.C. 271, 400 S.E.2d 130.

11. Volunteer worker

Workers’ compensation claimant, who participated in non‑profit organization’s program to rehabilitate former substance abusers, ex‑convicts, and homeless adults, was volunteer/gratuitous worker. and thus was not entitled to benefits, since claimant neither received nor expected to receive any kind of pay for his services, and room and board claimant received from non‑profit were not provided as payment for his work, but rather provided to develop skills to aid in claimant’s transition into working world. Simmons v. SC STRONG (S.C.App. 2013) 402 S.C. 166, 739 S.E.2d 631, rehearing denied, certiorari denied. Workers’ Compensation 255

Although by‑laws of rural electric cooperative permitted compensation on a per diem basis, provided for trustees to be reimbursed for actual expenses incurred, and allowed other benefits, when read as a whole, the by‑laws did not create an employment relationship, for workers’ compensation purposes, between cooperative and member of cooperative’s board of trustees, who was injured in auto accident while driving to annual convention and who sought workers’ compensation benefits for his injuries; rather, these benefits and compensation constituted gratuitous payments, allowed in the board’s discretion, and were not compensation for services rendered. Shuler v. Tri‑County Elec. Co‑op., Inc. (S.C.App. 2007) 374 S.C. 516, 649 S.E.2d 98, rehearing denied, certiorari granted, affirmed 385 S.C. 470, 684 S.E.2d 765. Workers’ Compensation 252

As an unpaid candy striper, the plaintiff was not an employee of a hospital, and thus workers’ compensation was not her sole remedy for an assault by an employee of the hospital. Doe by Doe v. Greenville Hosp. System (S.C.App. 1994) 323 S.C. 33, 448 S.E.2d 564, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 320 S.C. 235, 464 S.E.2d 124.

The daughter of a store owner, who was helping her father at his store but was not paid in any form, was not an “employee” within the meaning of the Workers’ Compensation Act (Section 42‑1‑130) but rather was a gratuitous worker. Kirksey v. Assurance Tire Co. (S.C. 1994) 314 S.C. 43, 443 S.E.2d 803. Workers’ Compensation 237; Workers’ Compensation 257

The daughter of an employer was not an employee for purposes of Section 42‑1‑360, and thus the employer did not regularly employ 4 persons at the time of the accident, where the daughter was helping her father because he was “in a bad financial bind” and he had helped her in the past, she neither received nor expect to receive any kind of pay, and there was no evidence that the employer had any right of control over her. Kirksey v. Assurance Tire Co. (S.C.App. 1993) 311 S.C. 255, 428 S.E.2d 721, rehearing denied, certiorari granted, affirmed 314 S.C. 43, 443 S.E.2d 803. Workers’ Compensation 238

12. Particular occupations

Emergency repair work on engine of bus company being done by employee of a garage at the time of an injury was a part of bus company’s trade, business or occupation, although the bus company had its own repair shOp Employee barred from bringing tort action against bus company but required to proceed under Workmen’s Compensation Law. Berry v. Atlantic Greyhound Lines, 1940, 114 F.2d 255.

Electrician is performing part of trade, business or occupation of textile company and is therefore statutory employee where he is engaged in routine repair and maintenance of electrical lines owned by textile company, and repair and maintenance of such lines is absolutely essential to continued operation of textile plant. Singleton v. J. P. Stevens & Co., Inc. (D.C.S.C. 1982) 533 F.Supp. 887, affirmed 726 F.2d 1011.

Claimant, a member of rural electric cooperative’s board of trustees who was injured in automobile accident while driving to convention on behalf of cooperative, was not a cooperative “employee” under an appointment, but was instead an elected board official who in turn was not entitled to workers’ compensation benefits. Shuler v. Tri‑County Elec. Co‑op, Inc. (S.C. 2009) 385 S.C. 470, 684 S.E.2d 765, rehearing denied. Workers’ Compensation 252

Claimant, a member of rural electric cooperative’s board of trustees who was injured in automobile accident while driving to convention on behalf of cooperative, was not a cooperative “employee” under a contract of hire, and thus was not entitled to workers’ compensation benefits, where, according to cooperative’s bylaws, claimant was not entitled to compensation for his services, and although claimant may have received reimbursement for expenses and other benefits, these payments were given at the discretion of cooperative such that claimant had no right to demand payment. Shuler v. Tri‑County Elec. Co‑op, Inc. (S.C. 2009) 385 S.C. 470, 684 S.E.2d 765, rehearing denied. Workers’ Compensation 237; Workers’ Compensation 252

Taxicab driver, who leased taxicab for per diem payment under written document entitled “Drivers Information and Training Package” and kept his fares and tips as compensation, was “employee,” as opposed to independent contractor, for workers’ compensation purposes; taxicab company reserved rights over drivers’ dress, equipment used in vehicles, fare setting, and radio dispatch requirements when checked in as a driver. Nelson v. Yellow Cab Co. (S.C.App. 2000) 343 S.C. 102, 538 S.E.2d 276, rehearing denied, certiorari granted, affirmed 349 S.C. 589, 564 S.E.2d 110. Workers’ Compensation 332

Claimant who assisted on fence construction project was an employee entitled to workers’ compensation benefits for being injured when stepping in a hole; employer had the right to control and direct the fence project, claimant was paid at an hourly rate, and employer had the right to fire, as indicated by his telling claimant when he could come and go. Dawkins v. Jordan (S.C. 2000) 341 S.C. 434, 534 S.E.2d 700, rehearing denied. Workers’ Compensation 234; Workers’ Compensation 235; Workers’ Compensation 237

The majority rule is that a juror is not within the scope of workers’ compensation laws as an employee of the court. Wilson v. Georgetown County (S.C. 1994) 316 S.C. 92, 447 S.E.2d 841.

The plaintiff, who would not serve as a juror due to his religious beliefs, was an employee of the county and therefore entitled to workers’ compensation benefits where he was asked by a judge to work as a janitor in lieu of juror service and was injured during such service. Wilson v. Georgetown County (S.C. 1994) 316 S.C. 92, 447 S.E.2d 841.

A subcontractor, who had employees of his own, could recover worker compensation benefits from the owner, since the owner was still liable for benefits due any employee inasmuch as although the owner asserted that the claimant failed to give the requisite notice, the record indicated that the claimant elected to be covered by the owner’s compensation insurance, he paid for the coverage with the premiums deducted from his wages, and the insurer had notice of the election by auditing the owner’s records to calculate the amount of premium due. Carver v. Bill Pridemore & Co. (S.C. 1982) 278 S.C. 235, 294 S.E.2d 419. Workers’ Compensation 403

Claimant, a carpenter who was engaged at the time of his injury in framing single‑family dwellings for a construction company, would be considered a covered employee under Section 42‑1‑130 where payment for his labor was made by the construction company on a footage basis by check each week from which claimant paid the other workers and where the company withheld 5 percent of the gross amount of each check and advised claimant that this deduction was being applied for Workmen’s Compensation Insurance, even though the deductions were not so applied. Middleton v. David A. Cantley Const. (S.C. 1982) 278 S.C. 154, 293 S.E.2d 311. Workers’ Compensation 237; Workers’ Compensation 1114

Driver of leased truck held employee of lessee. See De Berry v. Coker Freight Lines (S.C. 1959) 234 S.C. 304, 108 S.E.2d 114.

Claimant, a “pulpwood producer,” was not an employee under this section [Code 1962 Section 72‑11]. Miles v. West Virginia Pulp & Paper Co. (S.C. 1948) 212 S.C. 424, 48 S.E.2d 26.

Where deceased was connected with a life insurance company as an industrial insurance agent under the terms and conditions of a written contract designated “Agent’s Agreement,” and was assigned debits or routes in a given area, the court held he was an employee within the meaning of this section [Code 1962 Section 72‑11]. Carter’s Dependents v. Palmetto State Life Ins. Co. (S.C. 1946) 209 S.C. 67, 38 S.E.2d 905.

Where a company contended that deceased claimant, who died from an infected vaccination, was not paid for the time consumed in being examined, inoculated and vaccinated during the first stages of hiring and therefore was not an employee it was held that this was not essential in order to constitute the relation of employer and employee. Alewine v. Tobin Quarries (S.C. 1945) 206 S.C. 103, 33 S.E.2d 81.

A deputy sheriff is an officer within the meaning of this section [Code 1962 Section 72‑11]. Willis v. Aiken County (S.C. 1943) 203 S.C. 96, 26 S.E.2d 313.

Finding that deceased city policeman was an employee of the city for an indefinite term, and that his duties were not solely administrative, nor of an administrative nature, had sufficient evidentiary support. Green v. City of Bennettsville (S.C. 1941) 197 S.C. 313, 15 S.E.2d 334.

Where well diggers, hired by a manufacturing company to dig a well on company land which had been rented out as a farm to a tenant who had three daughters employed by the company, were injured in a dynamite explosion and sought relief on the ground that their work was in the course of the business of their employer, it was held that they were casual employees and not engaged in the course of the business within the meaning of this section [Code 1962 Section 72‑11]. Patterson v. Courtenay Mfg. Co. (S.C. 1941) 196 S.C. 515, 14 S.E.2d 16.

13. Election of coverage

Section 42‑1‑130 (1976) does not require that partner of business whose employees are eligible for benefits give written notice of his election to be covered as employee under workers’ compensation coverage, nor that partner notify Workers’ Compensation Commission of his election; notice required by section 42‑1‑130 may be given either orally or in writing. Johnson v. Pennsylvania Millers Mut. Ins. Co. (S.C.App. 1987) 292 S.C. 33, 354 S.E.2d 791.

14. Jurisdiction

In determining jurisdictional questions concerning the Workers’ Compensation Commission, doubts of jurisdiction will be resolved in favor of inclusion of employees within workers’ compensation coverage rather than exclusion. Simmons v. SC STRONG (S.C.App. 2013) 402 S.C. 166, 739 S.E.2d 631, rehearing denied, certiorari denied. Workers’ Compensation 1348

The existence of an employer‑employee relationship is a factual question that determines the jurisdiction of the Workers’ Compensation Commission. Simmons v. SC STRONG (S.C.App. 2013) 402 S.C. 166, 739 S.E.2d 631, rehearing denied, certiorari denied. Workers’ Compensation 233; Workers’ Compensation 1709

Contract of employment is the jurisdictional factor used to determine if an employment relationship exists for workers’ compensation purposes, and although no formality is required, the contract is established if the parties recognize each other as employer and employee. Shuler v. Tri‑County Elec. Co‑op., Inc. (S.C.App. 2007) 374 S.C. 516, 649 S.E.2d 98, rehearing denied, certiorari granted, affirmed 385 S.C. 470, 684 S.E.2d 765. Workers’ Compensation 244; Workers’ Compensation 246

Whether or not an employer‑employee relationship exists, for purposes of workers’ compensation, is a jurisdictional question. Edens v. Bellini (S.C.App. 2004) 359 S.C. 433, 597 S.E.2d 863. Workers’ Compensation 233

In workers’ compensation cases, the existence of the employer‑employee relationship is a jurisdictional question. Olmstead v. Shakespeare (S.C.App. 2002) 348 S.C. 436, 559 S.E.2d 370, rehearing denied, certiorari granted, affirmed as modified 354 S.C. 421, 581 S.E.2d 483. Workers’ Compensation 1709

Since the determination of whether an employer‑employee relationship exists is jurisdictional, an award will not be made under the Workers’ Compensation Act unless an employment relationship exists at the time of the alleged injury for which a claim is made. Crim v. Decorator’s Supply (S.C.App. 1987) 291 S.C. 193, 352 S.E.2d 520. Workers’ Compensation 233

15. Questions of law

The determination of whether a worker is a statutory employee under Worker’s Compensation Act is jurisdictional and a question of law. Johnson v. Jackson (S.C.App. 2012) 401 S.C. 152, 735 S.E.2d 664, certiorari denied. Workers’ Compensation 187

16. Sufficiency of evidence

Direct evidence of hospital’s right or exercise of control over workers’ compensation claimant, a nurse anesthetist assigned by nurse staffing agency, supported a finding of an employment relationship; claimant executed documents immediately upon her assignment acknowledging that she was a temporary employee of hospital, she received “new employee packet” wherein it was agreed that she was an employee at‑will, she began each work day by reporting to a hospital supervisor who directed her activities throughout the day, and hospital’s control over her transcended mere compliance with governmental regulations. Shatto v. McLeod Regional Medical Center (S.C. 2013) 406 S.C. 470, 753 S.E.2d 416, on remand 408 S.C. 595, 759 S.E.2d 443. Workers’ Compensation 338

Evidence preponderated in workers’ compensation case in favor of an employer‑employee relationship, as opposed to an independent contractor relationship, between hospital and workers’ compensation claimant, a nurse anesthetist who worked at hospital pursuant to her contract with a nurse staffing agency and staffing agency’s contract with hospital; while nurse anesthetist at no point during her employment received remuneration or benefits directly from hospital, hospital exercised actual direct control over her work, provided all the equipment she needed to do her job, and had the right to terminate her employment if her work was unsatisfactory. Shatto v. McLeod Regional Medical Center (S.C. 2013) 406 S.C. 470, 753 S.E.2d 416, on remand 408 S.C. 595, 759 S.E.2d 443. Workers’ Compensation 338

Sufficient evidence supported conclusion that workers’ compensation claimant, a driver for collateral repossession business, was an employee, rather than an independent contractor, and, thus, was eligible for benefits as result of work‑related vehicle accident that rendered him a paraplegic; there was direct evidence of the right to control, the furnishing of equipment, and the right to fire, and with respect to method of payment, while there were some facts that indicated the presence of an independent contractor relationship, other facts indicated that claimant was an employee, and in viewing all four factors in a balanced and equally‑weighted way, factors preponderated in a finding that claimant was an employee. Paschal v. Price (S.C. 2011) 392 S.C. 128, 708 S.E.2d 771, rehearing denied. Workers’ Compensation 1460

Claimant failed to demonstrate by a preponderance of the evidence that an employer‑employee relationship existed between claimant and alleged employer, which was necessary prerequisite for claimant to be eligible for benefits; Employment Security Commission records indicated that claimant drew unemployment compensation during time period he was allegedly employed, claimant did not remember name of his supervisor at work site on day of accident, nor could he name company involved in construction project, and claimant offered no documentary evidence of his employment in form of wage receipts, check stubs, copies of completed applications, W‑2 forms, or copies of income tax returns. Porter v. Labor Depot (S.C.App. 2007) 372 S.C. 560, 643 S.E.2d 96, rehearing denied, certiorari denied. Workers’ Compensation 1435

Preponderance of the evidence supported Workers’ Compensation Commission’s finding that claimant was employee of construction company at time he was injured, despite his filing of low earnings and partial claim reports with Employment Security Commission for time period in which he was injured; company’s owner testified that claimant was hired as carpenter, was considered his foreman, and that he signed claim reports for him so he could receive partial compensation on days in which claimant and others could not work due to weather conditions, witness who had hired company to build house testified that he had seen claimant working on house on several occasions, and owner drove claimant to hospital after he sustained injury and told him he would pay his medical bills. Lake v. Reeder Const. Co. (S.C.App. 1998) 330 S.C. 242, 498 S.E.2d 650, rehearing denied. Workers’ Compensation 1453

17. Review

Because the question of whether employer‑employee relationship existed at time of alleged injury for which workers’ compensation claim is made is jurisdictional, reviewing court may take its own view of the preponderance of the evidence. Shatto v. McLeod Regional Medical Center (S.C. 2013) 406 S.C. 470, 753 S.E.2d 416, on remand 408 S.C. 595, 759 S.E.2d 443. Workers’ Compensation 1939.11(2)

Because determination of the employer‑employee relationship for workers’ compensation purposes was jurisdictional, Supreme Court had the power and duty to review the entire record and decide the jurisdictional facts in accord with the preponderance of the evidence, in wrongful death action against statutory employer. Poch v. Bayshore Concrete Products/South Carolina, Inc. (S.C. 2013) 405 S.C. 359, 747 S.E.2d 757. Workers’ Compensation 2242

Claimant’s argument, that he was apprentice in non‑profit organization to rehabilitate former substance abusers, ex‑convicts, and homeless adults, and thus was entitled to workers’ compensation coverage for his neck and spinal injuries, was not preserved for appeal, where claimant raised argument for first time in reply brief and it was not ruled upon by appellate panel of Workers’ Compensation Commission. Simmons v. SC STRONG (S.C.App. 2013) 402 S.C. 166, 739 S.E.2d 631, rehearing denied, certiorari denied. Workers’ Compensation 1847

When an issue involves jurisdiction of the Workers’ Compensation Commission, the appellate court can take its own view of the preponderance of the evidence. Simmons v. SC STRONG (S.C.App. 2013) 402 S.C. 166, 739 S.E.2d 631, rehearing denied, certiorari denied. Workers’ Compensation 1939.11(2)

The finding by a workers’ compensation commissioner that a truck driver was an independent contractor, without a corresponding finding that the driver had elected to receive benefits pursuant to Section 42‑1‑130, implicitly held that the driver was not a statutory employee of the contractor who had hired him, and thus the issue of his status as a statutory employee was preserved for review. Smith v. Squires Timber Co. (S.C. 1993) 311 S.C. 321, 428 S.E.2d 878, rehearing denied.

Employee waived on appeal issue of whether he was a “covered contractor” and thus not subject to “detailed instructions and paternalistic discipline” from his employer, in workers’ compensation case, as employee failed to raise issue to Worker’s Compensation Commission or to trial court. Pratt v. Morris Roofing, Inc. (S.C.App. 2003) 353 S.C. 339, 577 S.E.2d 475, rehearing denied, certiorari granted, affirmed as modified 357 S.C. 619, 594 S.E.2d 272. Workers’ Compensation 1847

**SECTION 42‑1‑140.** “Employer” defined.

The term “employer” means the State and all political subdivisions thereof, all public and quasi‑public corporations therein, every person carrying on any employment and the legal representative of a deceased person or the receiver or trustee of any person.

HISTORY: 1962 Code Section 72‑12; 1952 Code Section 72‑12; 1942 Code Section 7035‑2; 1936 (39) 1231.

CROSS REFERENCES

Definition of employer for purposes of unemployment compensation, see Section 41‑27‑210.

Who is employer of assigned employee under staff leasing services agreement, see Sections 40‑68‑70, 40‑68‑180.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 105:20, Public Employers.

Attorney General’s Opinions

Churches, as charitable institutions, are exempted as employers from the Workmen’s Compensation Act. 1966‑67 Op.Atty.Gen., No. 2302, p 121, 1967 WL 8612; 1971‑72 Op.Atty.Gen., No. 3371, p 222, 1972 WL 20501.

NOTES OF DECISIONS

In general 1

1. In general

There are two classes of employers: (1) Those who are automatically under the Act and (2) those who are exempt from its provisions and, therefore, as to whom the Act never comes into effect. Bean v. Piedmont Interstate Fair Ass’n, 1954, 124 F.Supp. 385, reversed 222 F.2d 227.

In an action against an employer alleging emotional harm caused by the sexual harassment of a co‑employee, the co‑employee would not be held to be the alter ego of the company for purposes of the exclusive remedy provision of the Workers’ Compensation Act, Section 42‑1‑540, where he was merely the office manager and the employee’s supervisor; only the “dominant corporate owners and officers” may be alter egos of the company. Dickert v. Metropolitan Life Ins. Co. (S.C. 1993) 311 S.C. 218, 428 S.E.2d 700, modified on rehearing.

“Upstream” subcontractors were statutory employers of an employee of a sub‑sub‑contractor under the Workers’ Compensation Act, and thus were immune from tort liability. Brittingham v. Williams Sign Erectors, Inc. (S.C.App. 1989) 299 S.C. 259, 384 S.E.2d 319. Workers’ Compensation 350

Since it is employment relationship which gives rise to liability for and right to compensation, where prisoner entered into private contract of hire with employee and was indistinguishable from any other employee, prisoner transcended his status and became private employee entitled to workmen’s compensation benefits. Hamilton v. Daniel Intern. Corp. (S.C. 1979) 273 S.C. 409, 257 S.E.2d 157.

Unless claimant knew of and agreed to a new employer‑employee relationship replacing the one theretofore existing, his rights under the Workmen’s Compensation Act against his regular employer were unabridged. Chavis v. Watkins (S.C. 1971) 256 S.C. 30, 180 S.E.2d 648.

Employment, like any other contract, presupposes understanding. The new relation cannot be thrust upon the servant without knowledge or consent. Chavis v. Watkins (S.C. 1971) 256 S.C. 30, 180 S.E.2d 648.

The burden rested upon the regular employer to show that a change in the identity of the claimant’s employer was made known to the claimant. Chavis v. Watkins (S.C. 1971) 256 S.C. 30, 180 S.E.2d 648.

Unless claimant understands and agrees to a new employer‑employee relationship, his rights under the Workmen’s Compensation Act are not impaired thereby. Addison v. Dixie Chevrolet Co. (S.C. 1965) 246 S.C. 86, 142 S.E.2d 442.

Cited in Bell v. South Carolina Elec. & Gas Co. (S.C. 1959) 234 S.C. 577, 109 S.E.2d 441.

The definitions of employers and employees who are subject to the provisions of this section [Code 1962 Section 72‑12] are very broad and comprehensive, and are entirely sufficient to, but they do not include charitable institutions. Caughman v. Columbia Y.M.C.A. (S.C. 1948) 212 S.C. 337, 47 S.E.2d 788.

A charitable organization or institution is not liable for compensation as an employer. Caughman v. Columbia Y.M.C.A. (S.C. 1948) 212 S.C. 337, 47 S.E.2d 788.

There is no distinction between an employer who elects to come within the terms of the Act and one who is compulsorily thereunder. Both are covered by the Act. To make a distinction would penalize an employer electing to come within the terms of the Act. Hopkins v. Darlington Veneer Co. (S.C. 1946) 208 S.C. 307, 38 S.E.2d 4.

Employer sold business but continued compensation coverage and insurance policy until after employee was injured. The Commission made award for compensation against seller and insurance carrier, which was affirmed because it could not be said as a matter of law that the claimant had notice of the change. Holloway v. G. O. Cooley & Sons (S.C. 1946) 208 S.C. 234, 37 S.E.2d 666.

**SECTION 42‑1‑150.** “Employment” defined.

The term “employment” includes employment by the State, all political subdivisions thereof, all public and quasi‑public corporations therein and all private employments in which four or more employees are regularly employed in the same business or establishment.

HISTORY: 1962 Code Section 72‑13; 1952 Code Section 72‑13; 1942 Code Section 7035‑2; 1963 (39) 1231; 1972 (57) 2339; 1974 (58) 2265.

CROSS REFERENCES

Definition of employment for purposes of unemployment compensation, see Section 41‑27‑230.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 105:6, Number of Employees.

Modern Workers’ Compensation Section 105:20, Public Employers.

Attorney General’s Opinions

Neither cotton gin operators nor fertilizer dealers are engaged in “agriculture” within the scope of this section [Code 1962 Section 72‑13]. 1971‑72 Op.Atty.Gen., No. 3363, p 211, 1972 WL 20493.

NOTES OF DECISIONS

In general 1

Review 2

1. In general

A long distance truck driver’s employment was not “located” in South Carolina for purposes of Section 42‑15‑10, even though he resided therein, where Georgia was the state in which he reported to his employer for duty, he picked up and returned his company truck, he received his work assignments, he called in during the course of his work, and he returned on completion of his work. Holman v. Bulldog Trucking Co. (S.C.App. 1993) 311 S.C. 341, 428 S.E.2d 889. Workers’ Compensation 90.1

In deciding where a transient worker’s employment is located for purposes of Section 42‑15‑10, the legislature intended the “base of operation” rule to apply, under which a worker’s employment is located at the employer’s place of business to which he reports, from which he receives his work assignments, and from which he starts his road trips, regardless of where his work is actually performed. Holman v. Bulldog Trucking Co. (S.C.App. 1993) 311 S.C. 341, 428 S.E.2d 889. Workers’ Compensation 74

“Quasi‑public corporations” fall within that group designated in this section [Code 1962 Section 72‑13] as “the State and all political subdivisions thereof,” which are subject to the terms of the Workmen’s Compensation Act regardless of the number of their employees. Black v. Town of Springfield (S.C. 1950) 217 S.C. 413, 60 S.E.2d 854.

Construing this section [Code 1962 Section 72‑13] in conjunction with Code 1962 Section 72‑102, it appears that municipal corporations and their employees are subject to and bound by the terms of the Workmen’s Compensation Act regardless of the number of employees employed by the municipality. Black v. Town of Springfield (S.C. 1950) 217 S.C. 413, 60 S.E.2d 854.

The hiring, or contract for employment, is the jurisdictional factor and not the actual commencement of work thereunder. Holland v. Georgia Hardwood Lumber Co. (S.C. 1949) 214 S.C. 195, 51 S.E.2d 744. Workers’ Compensation 248

2. Review

The court of appeals would not create, for purposes of Section 42‑15‑10, a statutory presumption that if an employee resided in South Carolina and there was no ready means to prove his hiring place, he was hired in this state, since it is not the province of the courts to perform legislative functions. Holman v. Bulldog Trucking Co. (S.C.App. 1993) 311 S.C. 341, 428 S.E.2d 889. Workers’ Compensation 1340

**SECTION 42‑1‑160.** “Injury” and “personal injury” defined.

(A) “Injury” and “personal injury” mean only injury by accident arising out of and in the course of employment and shall not include a disease in any form, except when it results naturally and unavoidably from the accident and except such diseases as are compensable under the provisions of Chapter 11 of this title. In construing this section, an accident arising out of and in the course of employment includes employment of an employee of a municipality outside the corporate limits of the municipality when the employment was ordered by a duly authorized employee of the municipality.

(B) Stress, mental injuries, and mental illness arising out of and in the course of employment unaccompanied by physical injury and resulting in mental illness or injury are not considered a personal injury unless the employee establishes, by a preponderance of the evidence:

(1) that the employee’s employment conditions causing the stress, mental injury, or mental illness were extraordinary and unusual in comparison to the normal conditions of the particular employment; and

(2) the medical causation between the stress, mental injury, or mental illness, and the stressful employment conditions by medical evidence.

(C) Stress, mental injuries, heart attacks, strokes, embolisms, or aneurisms arising out of and in the course of employment unaccompanied by physical injury are not considered compensable if they result from any event or series of events which are incidental to normal employer/employee relations including, but not limited to, personnel actions by the employer such as disciplinary actions, work evaluations, transfers, promotions, demotions, salary reviews, or terminations, except when these actions are taken in an extraordinary and unusual manner.

(D) Stress, mental injuries, and mental illness alleged to have been aggravated by a work‑related physical injury may not be found compensable unless the aggravation is:

(1) admitted by the employer/carrier;

(2) noted in a medical record of an authorized physician that, in the physician’s opinion, the condition is at least in part causally related or connected to the injury or accident, whether or not the physician refers the employee for treatment of the condition;

(3) found to be causally related or connected to the accident or injury after evaluation by an authorized psychologist or psychiatrist; or

(4) noted in a medical record or report of the employee’s physician as causally related or connected to the injury or accident.

(E) In medically complex cases, an employee shall establish by medical evidence that the injury arose in the course of employment. For purposes of this subsection, “medically complex cases” means sophisticated cases requiring highly scientific procedures or techniques for diagnosis or treatment excluding MRIs, CAT scans, x‑rays, or other similar diagnostic techniques.

(F) The word “accident” as used in this title must not be construed to mean a series of events in employment, of a similar or like nature, occurring regularly, continuously, or at frequent intervals in the course of such employment, over extended periods of time. Any injury or disease attributable to such causes must be compensable only if culminating in a compensable repetitive trauma injury pursuant to Section 42‑1‑172 or an occupational disease pursuant to the provisions of Chapter 11 of this title.

(G) As used in this section, “medical evidence” means expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed health care provider.

HISTORY: 1962 Code Section 72‑14; 1952 Code Section 72‑14; 1942 Code Section 7035‑2; 1936 (39) 1231; 1957 (50) 262; 1996 Act No. 424, Section 2, eff June 18, 1996; 2007 Act No. 111, Pt I, Section 6, eff July 1, 2007, applicable to injuries that occur on or after that date.

Editor’s Note

1996 Act No. 424, Section 13, provides, in part, as follows:

“Section 13. Employers who have filed with the Workers’ Compensation Commission a notice to reject the provisions of Title 42 before the effective date of the 1996 amendment will have until July 1, 1997, to comply with the provisions of the 1996 amendment relating to insuring their workers’ compensation liabilities. Any employer who has rejected the terms of this title prior to approval of the 1996 amendment and has procured another form of employee benefits insurance shall comply, not later than July 1, 1997, with the provisions of the 1996 amendment relating to the insuring of its workers’ compensation liabilities. Furthermore, nothing in the 1996 amendment shall affect or alter any cause of action, right, or claim accruing before the effective date of the 1996 amendment; however, any such cause of action, remedy, or claim accruing before the effective date of the 1996 amendment shall be governed by the law prior to the effective date of the 1996 amendment.”

RESEARCH REFERENCES

ALR Library

83 ALR 5th 103 , Right to Workers’ Compensation for Emotional Distress or Like Injury Suffered by Claimant as Result of Sudden Stimuli Involving Nonpersonnel Action‑Right to Compensation Under Particular Statutory Provisions and...

84 ALR 5th 249 , Right to Workers’ Compensation for Emotional Distress or Like Injury Suffered by Claimant as Result of Sudden Stimuli Involving Nonpersonnel Action‑Compensability Under Particular Circumstances.

97 ALR 5th 1 , Right to Workers’ Compensation for Emotional Distress or Like Injury Suffered by Claimant as Result of Nonsudden Stimuli‑Right to Compensation Under Particular Statutory Provisions.

108 ALR 5th 1 , Right to Workers’ Compensation for Emotional Distress or Like Injury Suffered by Claimant as Result of Nonsudden Stimuli‑Compensability Under Particular Circumstances.

106 ALR 5th 111 , Right to Workers’ Compensation for Emotional Distress or Like Injury Suffered by Claimant as Result of Nonsudden Stimuli‑Requisites Of, and Factors Affecting, Compensability.

Treatises and Practice Aids

31 Causes of Action 2d 307, Cause of Action to Recover Workers’ Compensation Benefits Under “Special Mission” or “Dual Purpose” Exception to “Going and Coming” Rule.

Modern Workers’ Compensation Section 108:1, Accidental Injury Requirement.

Modern Workers’ Compensation Section 110:1, Work Nexus is Essential.

Modern Workers’ Compensation Section 321:3, Definition of “Injury” and “Accident”.

Modern Workers’ Compensation Section 321:5, Injury “Arising Out of the Employment”.

Modern Workers’ Compensation Section 202:15, Dentistry.

Modern Workers’ Compensation Section 321:14, Occupational Disease.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Injuries Arising out of and in the Course of Employment; Close Proximity to Place of Employment. 31 S.C. L. Rev. 153.

Annual Survey of South Carolina Law: Injuries Arising out of and in the Course of Employment; The Special Errand Doctrine. 31 S.C. L. Rev. 155.

Annual survey of South Carolina law, workers’ compensation law. 40 S.C. L. Rev. 267 (Autumn 1988).

Annual Survey of South Carolina Law: Workmen’s Compensation. 30 S.C. L. Rev. 177.

Annual Survey of South Carolina Law: Workmen’s Compensation; Accidents While Going to and From Work. 32 S.C. L. Rev. 234 (August, 1980).

Coverage for Cops: Should Injuries Sustained by Off‑Duty Sheriff’s Deputies in Their Patrol Cars Be Compensable Under the Worker’s Compensation Act? 55 SC Law Rev 695 (Spring 2004).

Extraordinary and unusual circumstances: compensability of psychological injuries under South Carolina’s Workers’ Compensation Law. Jordan Michael Janoski, 64 S.C. L. Rev. 1063 (Summer 2013).

Injuries Arising Out of Employment. 25 S.C. L. Rev. 508.

1981 Survey: South Carolina Workmen’s Compensation Act; Compensability of recreational injuries. 34 S.C. L. Rev. 6 (August 1982).

Recovery limitation held inapplicable. 39 S.C. L. Rev. 239 (Autumn 1987).

Scope of Employment Under the Workmen’s Compensation Act, 2 SCLQ 169 (1949).

Attorney General’s Opinions

The employees of a private employer or state agency which sponsored a vanpool would probably be covered under the provisions of the S.C. Workman’s Compensation Act for injuries received traveling to and from work; a private employer or state agency which sponsored a vanpool would not be liable for the torts of its vanpool employees traveling to and from work. 1979 Op.Atty.Gen., No. 79‑127, p 194, 1979 WL 29129.

Injuries sustained directly by a volunteer fireman while travelling in his personal vehicle to or from the scene of a fire are compensable under the South Carolina Workmen’s Compensation Act. 1976‑77 Op.Atty.Gen., No. 77‑185, p 142, 1977 WL 24527.

NOTES OF DECISIONS

In general 1

Acts of fellow employees 28

Admissibility of evidence 41

Aggravation of previous injury 40

Applications of general rule, going to or coming from work 32

Area where injury sustained 27

Arising out of and in the course of employment 12

Arising out of employment 14‑18

In general 14

Causal connection 17

Medical evidence 18

Personal comfort doctrine 16

Proximate cause 15

Assaults 29

Back injury 34

Burden of proof 42

Business trips 23

Carpal tunnel syndrome, injury by accident 9

Causal connection, arising out of employment 17

Cerebral thrombosis 39

Construction and application 2

Deviation from duties 25

Exceptions to general rule, going to or coming from work 31

Going to or coming from work 30‑32

In general 30

Applications of general rule 32

Exceptions to general rule 31

Greater risk of injury, injury by accident 4

Heart attack 35‑38

in general 35

Pre‑existing condition 37

Unusual exertion or strain 38

Work conditions 36

Idiopathic fall doctrine 11.5

In the course of employment 19

Incidental to employment 20

Injury by accident 3‑11

In general 3

Carpal tunnel syndrome 9

Greater risk of injury 4

Mental illness 8

Mental injury 7

Miscellaneous injuries 11

Prosthetic devices 5

Repetitive motion injuries 10

Varicose veins 6

Lunch hour 21

Medical evidence, arising out of employment 18

Mental illness, injury by accident 8

Mental injury, injury by accident 7

Miscellaneous injuries, injury by accident 11

Personal comfort doctrine, arising out of employment 16

Pre‑existing condition, heart attack 37

Presumptions 43

Prosthetic devices, injury by accident 5

Proximate cause, arising out of employment 15

Questions of fact 44

Repetitive motion injuries, injury by accident 10

Review 46

Risks peculiar to work 13

Sports injuries 33

Sufficiency of evidence 45

Trip for personal purposes 24

Unrelated work 26

Unusual exertion or strain, heart attack 38

Vacation 22

Varicose veins, injury by accident 6

Work conditions, heart attack 36

1. In general

Only the facts and circumstances of the injury can determine whether it is compensable and, therefore, whether the employee’s remedy is exclusively under the Compensation Law. Thompson v J. A. Jones Const. Co. (1942) 199 SC 304, 19 SE2d 226. Ritter v Allied Chemical Corp. (1968, DC SC) 295 F Supp 1360, affd (CA4 SC) 407 F2d 403.

The exclusivity provisions of South Carolina’s Workers’ Compensation law do not bar suits for claims for which the Act provides no remedy. Fotia v. Palmetto Behavioral Health, 2004, 317 F.Supp.2d 638. Workers’ Compensation 2084

A specific act need not be designated in an employee’s job description to be compensable under Workers’ Compensation Law. Whigham v. Jackson Dawson Communications (S.C. 2014) 410 S.C. 131, 763 S.E.2d 420, rehearing denied. Workers’ Compensation 619

Both parts of statute requiring injury to arise out of and in the course of employment must exist simultaneously before a court will allow recovery. Grant v. Grant Textiles (S.C. 2007) 372 S.C. 196, 641 S.E.2d 869, rehearing denied. Workers’ Compensation 604

The legislature intended an accident to be compensable under the Workers’ Compensation Act, even where the effects of the accident develop gradually. Pee v. AVM, Inc. (S.C. 2002) 352 S.C. 167, 573 S.E.2d 785. Workers’ Compensation 515

In order to be entitled to workers’ compensation benefits, the employee must show he or she sustained an injury by accident arising out of and in the course of employment. Owings v. Anderson County Sheriff’s Dept. (S.C. 1993) 315 S.C. 297, 433 S.E.2d 869, rehearing denied.

The three criteria for determining whether an injury is compensable are (1) accident, (2) arising out of employment, and (3) arising in the course of employment. Doe v. South Carolina State Hosp. (S.C.App. 1985) 285 S.C. 183, 328 S.E.2d 652.

The Workmen’s Compensation Act does not cover diseases generally, but only occupational diseases or a disease that results from an injury by accident arising out of and in the course of employment. Cooper v. John Hancock Mut. Life Ins. Co. (S.C. 1966) 248 S.C. 534, 151 S.E.2d 668.

Negligence and contributory negligence are of no consequence in workmen’s compensation cases. Jordan v. Dixie Chevrolet (S.C. 1950) 218 S.C. 73, 61 S.E.2d 654. Workers’ Compensation 6; Workers’ Compensation 772

The workmen’s compensation statute excludes from consideration as defeating an employee’s claim any question of mere negligence on his part or assumption of risk. Johnson v. Merchant’s Fertilizer Co. (S.C. 1941) 198 S.C. 373, 17 S.E.2d 695. Workers’ Compensation 772

2. Construction and application

In determining whether a work‑related injury is compensable, courts liberally construe the Workers’ Compensation Law toward providing coverage and resolve any reasonable doubt as to the construction of the Law in favor of coverage. Whigham v. Jackson Dawson Communications (S.C. 2014) 410 S.C. 131, 763 S.E.2d 420, rehearing denied. Workers’ Compensation 52

Workers’ Compensation Act should be construed in favor of coverage, and any reasonable doubts as to construction of the Act should be resolved in favor of the claimant. Hall v. Desert Aire, Inc. (S.C.App. 2007) 376 S.C. 338, 656 S.E.2d 753, rehearing denied. Workers’ Compensation 52

In determining whether a work‑related injury is compensable, the Workers’ Compensation Act is liberally construed toward the end of providing coverage rather than noncoverage in order to further the beneficial purposes for which it was designed, and any reasonable doubt as to the construction of the Act will be resolved in favor of coverage. Shealy v. Aiken County (S.C. 2000) 341 S.C. 448, 535 S.E.2d 438, rehearing denied. Workers’ Compensation 511

The Workmen’s Compensation Act is entitled to a liberal construction in furtherance of the beneficial purposes for which it was designed. Carter v. Penney Tire & Recapping Co. (S.C. 1973) 261 S.C. 341, 200 S.E.2d 64. Workers’ Compensation 51

The Workmen’s Compensation Act has to be construed liberally in favor of coverage, and doubtful cases should be resolved in favor of the injured employee. Douglas v. Spartan Mills, Startex Division (S.C. 1965) 245 S.C. 265, 140 S.E.2d 173.

In dealing with a matter such as the scope of the employment of an employee, the terms of which are not usually in writing, it seems that the law should be construed with reasonable liberality. King v. Wesner (S.C. 1941) 198 S.C. 49, 16 S.E.2d 289. Workers’ Compensation 605

3. Injury by accident—In general

The words “by accident,” and “the accident,” as used in this section [Code 1962 Section 72‑14] and the words “accidental means,” as used in insurance policies are synonymous. Layton v Hammond‑Brown‑Jennings Co. (1939) 190 SC 425, 3 SE2d 492. Colvin v E. I. Du Pont De Nemours Co. (1955) 227 SC 465, 88 SE2d 581.

The word “accident” as used here is defined as an unlooked for and untoward event which is not expected or designed by the person who suffered the injury. Radcliffe v Southern Aviation School (1946) 209 SC 411, 40 SE2d 626. Green v Bennettsville (1941) 197 SC 313, 15 SE2d 334.

The rule is, that when injury or death follows or results from a voluntary act of the insured, and the act is one which is not manifestly dangerous, but which is ordinarily done or performed without serious consequences to the doer, such result is caused by accidental means. Willis v Aiken County (1943) 203 SC 96, 26 SE2d 313. Thompson v J. A. Jones Const. Co. (1942) 199 SC 304, 19 SE2d 226. Layton v Hammond‑Brown‑Jennings (1939) 190 SC 425, 3 SE2d 492. Cole’s Next of Kin v Anderson Cotton Mills (1939) 191 SC 458, 4 SE2d 908 (disapproved on other grounds Peagler v Atlantic C.L.R. Co., 232 SC 274, 101 SE2d 821). Goethe v New York Life Ins. Co. (1937) 183 SC 199, 190 SE 451.

An injury is unexpected, bringing it within the category of accident, if the workers’ compensation claimant did not intend it or expect it would result from what he was doing; therefore, if an injury is unexpected from the claimant’s point of view, it qualifies as an injury by accident. Landry v. Carolinas Healthcare Systems (S.C.App. 2011) 396 S.C. 149, 719 S.E.2d 288, rehearing denied. Workers’ Compensation 515

An injury is unexpected, bringing it within the category of accident, if the workers’ compensation claimant did not intend it or expect it would result from what he was doing, and thus, if an injury is unexpected from the worker’s point of view, it qualifies as an “injury by accident.” Pee v. AVM, Inc. (S.C. 2002) 352 S.C. 167, 573 S.E.2d 785. Workers’ Compensation 515

Definiteness of time, while relevant to proving causation, is not required to prove an injury qualifies as an “injury by accident” in proceeding for workers’ compensation benefits. Pee v. AVM, Inc. (S.C. 2002) 352 S.C. 167, 573 S.E.2d 785. Workers’ Compensation 515

An injury need only be unexpected in order to be considered an injury by accident under the Workers’ Compensation Act; there is no requirement in the Act that the injury be distinct, as opposed to gradual. Pee v. AVM, Inc. (S.C.App. 2001) 344 S.C. 162, 543 S.E.2d 232, rehearing denied, certiorari granted, affirmed 352 S.C. 167, 573 S.E.2d 785. Workers’ Compensation 517

An employee who becomes ill or dies of natural causes while at work does not suffer an accident arising out of employment because the condition is a natural result or consequence that might be termed normal and to be expected. Jennings v. Chambers Development Co. (S.C.App. 1999) 335 S.C. 249, 516 S.E.2d 453, rehearing denied, certiorari denied. Workers’ Compensation 610

The exclusivity provision of the Workers’ Compensation Act does not bar a common law action against an employer for intentional infliction of emotional distress. The intentional and outrageous nature of the act removes it from the realm of an “accidental” injury. McSwain v. Shei (S.C. 1991) 304 S.C. 25, 402 S.E.2d 890. Workers’ Compensation 2093

The word “accident,” as used in a worker’s compensation act, means an unlooked for and untoward event that the person who suffered the injury did not expect, design, or intentionally cause. Yates v. Life Ins. Co. of Georgia (S.C.App. 1987) 291 S.C. 301, 353 S.E.2d 297.

A heart attack resulting from a pre‑existing pathology coupled with unusual and extraordinary conditions of employment is compensable. Cline v. Nosredna Corp., Inc. (S.C.App. 1986) 291 S.C. 75, 352 S.E.2d 291. Workers’ Compensation 555.7

The adjective “accidental” qualifies and describes the injuries contemplated by this section as having the quality or condition of happening or coming by chance or without design, taking place unexpectedly or unintentionally. If one becomes ill while at work from natural causes, the state or condition is not accidental since it is a natural result or consequence and might be termed normal and to be expected. If, however, there is a subsisting condition of illness or incapacity or physical disability which is caused, increased, or accelerated by some act or event coming by chance or happening fortuitously, then the requisite quality or condition of the injury will exist so as to make it accidental. Neither is it necessary that the accidental quality or condition be created by wound or external violence. Riley v. South Carolina State Ports Authority (S.C. 1970) 253 S.C. 621, 172 S.E.2d 657.

A physical seizure unrelated to the employment is not such an accident as is compensable. Bagwell v. Ernest Burwell, Inc. (S.C. 1955) 227 S.C. 444, 88 S.E.2d 611. Workers’ Compensation 523

“Accident” is generally construed as meaning an occurrence which is neither expected, designed nor intentionally caused by the workman. Colvin v. E. I. Du Pont De Nemours Co. (S.C. 1955) 227 S.C. 465, 88 S.E.2d 581.

An injury is unexpected, so as to bring it within the category of “accident” if the workman did not intend or expect that it would result on the particular occasion from what he was doing. Colvin v. E. I. Du Pont De Nemours Co. (S.C. 1955) 227 S.C. 465, 88 S.E.2d 581.

The adjective “accidental” qualifies and describes the injuries contemplated by this section as having the quality or condition of happening or coming by chance or without design, taking place unexpectedly or unintentionally. Hiers v. Brunson Const. Co. (S.C. 1952) 221 S.C. 212, 70 S.E.2d 211.

The word “accident” refers to the cause of the injury and is an unlooked for mishap or untoward event which is not expected or designed by the person who suffered the injury and it implies that there was an external act or occurrence which caused the injury or death and contemplates an event not within one’s foresight and expectation and may be due to purely accidental causes or may be due to oversight and negligence, carelessness, not wilful, to fatigue or to miscalculation of effects of voluntary action. Lanford v. Clinton Cotton Mills (S.C. 1944) 204 S.C. 423, 30 S.E.2d 36. Workers’ Compensation 514

In the case of Cole’s Next of Kin v Anderson Cotton Mills (1939) 191 SC 458, 4 SE2d 908 (disapproved on other grounds Peagler v Atlantic C.L.R. Co., 232 SC 274, 101 SE2d 821), the court defined the term accident in the following words, quoting from the case of Western Commercial Travelers’ Asso. v Smith (1898, CA8 Mo) 85 F 401: “. . . An effect which does not ordinarily follow and cannot be reasonably anticipated from the use of those means, an effect which the actor did not intend to produce and . . . cannot be charged with the design of producing, is produced by accidental means.” Stewart v. McLellan’s Stores Co. (S.C. 1940) 194 S.C. 50, 9 S.E.2d 35.

4. —— Greater risk of injury, injury by accident

Firefighter was not required to demonstrate a “greater risk” of an injury from a spider bite, which ultimately led to amputation of firefighter’s left leg, than the general public’s risk, when seeking workers’ compensation benefits; brown recluse spider was in firefighter’s boot and bit firefighter in right leg, which, due to diabetes and hypertension, led to complications in firefighter’s left leg. Simmons v. City of Charleston (S.C.App. 2002) 349 S.C. 64, 562 S.E.2d 476, rehearing denied, certiorari dismissed. Workers’ Compensation 623

The Supreme Court does not agree in the statement that under South Carolina decisions if the fall originates in a cause unrelated to the employment, compensation must be denied even though a particular hazard inherent in the working conditions contributes to the fall and consequent injury. Turner v. Campbell Soup Co. (S.C. 1969) 252 S.C. 446, 166 S.E.2d 817.

The floor in such case did not create a hazard which would not be encountered on a sidewalk or street or in a home where a hard surface of the ground or a hard floor existed. Bagwell v. Ernest Burwell, Inc. (S.C. 1955) 227 S.C. 444, 88 S.E.2d 611.

Where the work and the method of doing the work expose the employee to the forces of nature to a greater extent than he would be if not so engaged, the industry increases the danger from such forces, and the employer is liable. Hiers v. Brunson Const. Co. (S.C. 1952) 221 S.C. 212, 70 S.E.2d 211. Workers’ Compensation 584

5. —— Prosthetic devices, injury by accident

An employee was entitled to the cost of replacement dentures and the payment of dentist bills through workers’ compensation where she was an employee of the Department of Youth Services, 2 youths were involved in an altercation which she attempted to end, and in the process she was hit in the mouth, thus injuring her lip and breaking her dentures; injury to, or destruction of, a prosthesis is a “physical injury” for workers’ compensation purposes. Corbett v. South Carolina Dept. of Youth Services (S.C. 1992) 307 S.C. 270, 414 S.E.2d 778.

Damage to a prosthetic device, which was incurred in an accident arising out of and in the course of employment, but was unaccompanied by compensable bodily injury, was not an injury under Section 42‑1‑160, and was therefore not compensable under Section 42‑15‑60. Lail v. Richland Wrecking Co., Inc. (S.C.App. 1984) 280 S.C. 532, 313 S.E.2d 342. Workers’ Compensation 512

6. —— Varicose veins, injury by accident

A masseur who developed varicose veins did not sustain an “injury by accident” within the meaning of the Workers’ Compensation Act, Section 42‑1‑10 et seq., even though his condition may have been aggravated by standing for 7 hours per day as required by his job, where his own physician testified that prolonged standing did not cause his varicose veins, and that the worsening of the condition was the natural and expected result of working in a job that was performed while standing. Havird v. Columbia YMCA (S.C.App. 1992) 308 S.C. 397, 418 S.E.2d 329, rehearing denied, certiorari denied.

Where claimant had an existing dormant varicose vein condition at the time he became employed in a job which was not strenuous but which did necessitate continued standing or walking, and shortly thereafter the condition worsened until claimant became completely disabled within 3 months, it was held that the aggravation caused by standing on the job was not an accident but rather a natural result of the pre‑existing disease; nor could claimant’s condition be traced to his employment as a contributing cause. Richardson v. Wellman Combing Co. (S.C. 1958) 233 S.C. 454, 105 S.E.2d 602.

7. —— Mental injury, injury by accident

To the extent emergency assessment worker alleging retaliatory termination sought to recover for emotional distress, that injury was alleged to have occurred as result of termination and thus outside scope of employment, for purposes of South Carolina Workers’ Compensation Statute’s exclusive remedy provisions. Fotia v. Palmetto Behavioral Health, 2004, 317 F.Supp.2d 638. Workers’ Compensation 2090

Unusual or extraordinary conditions of employment resulting in compensable mental injury refer to conditions of the particular job, not to conditions of employment generally. Bentley v. Spartanburg County (S.C. 2012) 398 S.C. 418, 730 S.E.2d 296, rehearing denied. Workers’ Compensation 546(1)

Deputy sheriff’s post‑traumatic stress disorder following job‑related fatal shooting of suspect did not arise from extraordinary and unusual condition of employment, as required to be compensable mental injury; use of deadly force was within normal scope and duties of deputy sheriff, deputy sheriff knew that he would sometimes be required to use deadly force on job, he was trained in use of deadly force, and he was aware of possibility that he might be required to fire his weapon to shoot and kill. Bentley v. Spartanburg County (S.C. 2012) 398 S.C. 418, 730 S.E.2d 296, rehearing denied. Workers’ Compensation 546(6)

Findings of fact of the appellate panel of the Workers’ Compensation Commission were sufficiently detailed regarding the proximate cause of claimant’s mental injury; appellate panel adopted the hearing commissioner’s order in its entirety, and the commissioner’s order specifically stated that claimant’s psychological condition was as a result of unusual and/or extraordinary conditions in his employment, specifically unreasonable expectations and production goals from his employer and continual and unrelenting stress on claimant. Smith v. NCCI, Inc. (S.C.App. 2006) 369 S.C. 236, 631 S.E.2d 268, rehearing denied. Workers’ Compensation 1820

Substantial evidence supported the Workers’ Compensation Commission’s determination that workers’ compensation claimant’s mental injury was not caused by the minor physical injuries she sustained while working as a nurse for employer; the statute that provided that mental injuries were compensable did not remove the causation requirement for a physical‑mental claim, claimant’s mental injury was not induced or caused by the physical injuries claimant sustained, rather claimant’s mental injury was caused by the stress of her work and her fear of being assaulted by patients. Doe v. S.C. Department of Disabilities and Special Needs (S.C.App. 2005) 364 S.C. 411, 613 S.E.2d 785, rehearing denied, certiorari granted, reversed 377 S.C. 346, 660 S.E.2d 260. Workers’ Compensation 1529.1(2)

In order to recover workers’ compensation benefits for a mental injury, claimant must prove both: (1) that she was exposed to unusual and extraordinary conditions in her employment; and (2) that these unusual and extraordinary conditions were the proximate cause of her mental breakdown. Doe v. S.C. Department of Disabilities and Special Needs (S.C.App. 2005) 364 S.C. 411, 613 S.E.2d 785, rehearing denied, certiorari granted, reversed 377 S.C. 346, 660 S.E.2d 260. Workers’ Compensation 546(1)

Substantial evidence supported the Workers’ Compensation Commission’s determination that workers’ compensation claimant’s mental injury was not caused by extraordinary and unusual conditions in her employment as a nurse caring for patients with mental retardation and cognitive disabilities; nursing supervisor stated that dealing with aggressive patients was not unusual, nurse agreed with nursing supervisor and stated that some physical confrontation with patients was to be expected and that was why the nurses took classes to train and “learn how to deal with that,” and claimant was hospitalized for depression before she started working for employer and was coping with her father’s death at the same time as she obtained her alleged mental injury. Doe v. S.C. Department of Disabilities and Special Needs (S.C.App. 2005) 364 S.C. 411, 613 S.E.2d 785, rehearing denied, certiorari granted, reversed 377 S.C. 346, 660 S.E.2d 260. Workers’ Compensation 1529.1(5)

The requirement of unusual or extraordinary conditions in employment for a workers’ compensation claimant to recover for a mental‑mental injury refers to conditions to the particular job in which the injury occurs, not to conditions of employment in general. Doe v. S.C. Department of Disabilities and Special Needs (S.C.App. 2005) 364 S.C. 411, 613 S.E.2d 785, rehearing denied, certiorari granted, reversed 377 S.C. 346, 660 S.E.2d 260. Workers’ Compensation 546(1)

Requirement that the job circumstances must be extraordinary and unusual, in order for a claimant’s mental‑mental injury to be compensable, is in regard to the particular employment in question, and not as applied to some general notion of the average reasonable employment. Frame v. Resort Services Inc. (S.C.App. 2004) 357 S.C. 520, 593 S.E.2d 491. Workers’ Compensation 546(1)

In order for a claimant to recover workers compensation benefits for a mental‑mental injury, he must prove both: (1) that he was exposed to unusual and extraordinary conditions in his employment; and (2) that these unusual and extraordinary conditions were the proximate cause of his mental breakdown. Frame v. Resort Services Inc. (S.C.App. 2004) 357 S.C. 520, 593 S.E.2d 491. Workers’ Compensation 546(1)

The Workers’ Compensation Act requirement of unusual or extraordinary conditions in employment for a claimant to recover for a mental‑mental injury refers to conditions to the particular job in which the injury occurs, not to conditions of employment in general. Frame v. Resort Services Inc. (S.C.App. 2004) 357 S.C. 520, 593 S.E.2d 491. Workers’ Compensation 546(1)

A “mental‑mental injury,” within the meaning of the Workers’ Compensation Act is a purely mental injury resulting from emotional stimuli. Frame v. Resort Services Inc. (S.C.App. 2004) 357 S.C. 520, 593 S.E.2d 491. Workers’ Compensation 546(1)

Mental injuries are compensable if they are induced either by physical injury or by unusual or extraordinary conditions of employment. Frame v. Resort Services Inc. (S.C.App. 2004) 357 S.C. 520, 593 S.E.2d 491. Workers’ Compensation 546(1); Workers’ Compensation 546(2)

“Unusual or extraordinary conditions in employment,” required for a workers’ compensation claimant to recover for a mental‑mental injury, refers to conditions extraordinary to the particular job in which the injury occurs, rather than to employment in general. Shealy v. Aiken County (S.C. 2000) 341 S.C. 448, 535 S.E.2d 438, rehearing denied. Workers’ Compensation 546(1)

Substantial evidence supported full Workers’ Compensation Commission’s finding that claimant’s psychological injuries of depression and post‑traumatic stress disorder were not proximately caused by his employment as a “deep cover” undercover narcotics police officer; outside stressors unrelated to claimant’s work contributed to or caused his injuries, such as financial problems leading to bankruptcy, marital problems, including a divorce and a custody battle over his son, memories of a gun fight and shooting a man during a previous employment, and the constant stress of fighting alcoholism. Shealy v. Aiken County (S.C. 2000) 341 S.C. 448, 535 S.E.2d 438, rehearing denied. Workers’ Compensation 1529.1(5); Workers’ Compensation 1529.1(6)

Mental injuries are compensable under workers’ compensation law if induced either by physical injury or by unusual or extraordinary conditions of employment. Getsinger v. Owens‑Corning Fiberglas Corp. (S.C.App. 1999) 335 S.C. 77, 515 S.E.2d 104, rehearing denied. Workers’ Compensation 546(1); Workers’ Compensation 546(2)

Workers’ compensation claimant seeking compensation for depression stemming from the deterioration of his work‑related foot injury was not required to prove that the depression was incident to an unusual and extraordinary condition of employment. Getsinger v. Owens‑Corning Fiberglas Corp. (S.C.App. 1999) 335 S.C. 77, 515 S.E.2d 104, rehearing denied. Workers’ Compensation 1357

Finding that workers’ compensation claimant’s depression was induced by his work‑related injury to his foot was supported by evidence that, prior to foot injury, claimant suffered no problems with his foot or psychiatric problems, by claimant’s testimony that his depression started when his foot pain worsened and was worried about being able to work, and by treating psychiatrist’s testimony that claimant’s foot injury precipitated his depression, that work was important to claimant, and that claimant’s suicidal thoughts were related to fact that claimant was sitting at home thinking about not being able to work anymore. Getsinger v. Owens‑Corning Fiberglas Corp. (S.C.App. 1999) 335 S.C. 77, 515 S.E.2d 104, rehearing denied. Workers’ Compensation 1529.1(5)

An action against an employer alleging emotional harm as a result of sexual harassment by a co‑employee was barred by the exclusivity provisions of the Workers’ Compensation Act, even though the employee suffered no disability, since mental trauma resulting from a physical assault is a covered injury. Dickert v. Metropolitan Life Ins. Co. (S.C. 1993) 311 S.C. 218, 428 S.E.2d 700, modified on rehearing.

An employee’s emotional injuries, caused by a co‑employee’s slanderous comments, arose out of and in the course of her employment where (1) the conduct began after the employees shared a car pool to work, (2) the vast majority and the most egregious of the conduct alleged occurred while the parties were at work, (3) the employee reported the co‑employee’s conduct to the employer several times, and (4) the employer issued disciplinary notices to the co‑employee; thus, a causal relationship existed between the conditions under which the employee’s work was to be performed and her resulting injury. Loges v. Mack Trucks, Inc. (S.C. 1992) 308 S.C. 134, 417 S.E.2d 538.

An employee’s nervous breakdown was an injury by accident and compensable under workers’ compensation where the employee was a vice‑president of the employer bank, he supervised 130 employees and 4 managers, and as the result of a merger with another bank his work hours increased from 45 hours to 60 hours per week for 6 months, to 70 hours per week for 4 months, and to 85 hours per week for the month prior to his hospitalization for the breakdown. Stokes v. First Nat. Bank (S.C. 1991) 306 S.C. 46, 410 S.E.2d 248.

A 10‑year employee of a sheriff’s department was entitled to workers’ compensation benefits for injuries received in a fall where the employee had arrived for work and was performing his duties when he was called to the sheriff’s office, was accused of soliciting donations for his disabled daughter contrary to office policy, was summarily discharged by the sheriff, and fainted as a result; thus, his injuries arose out of his employment and constituted a physical injury resulting from a mental impact. Linnen v. Beaufort County Sheriff’s Dept. (S.C.App. 1991) 305 S.C. 341, 408 S.E.2d 248, certiorari denied.

“Mental‑mental” injuries ‑ mental disorders resulting from emotional stimuli ‑ may be compensable provided that the emotional stimuli or stressors are incident to or arise from unusual or extraordinary conditions of employment. Powell v. Vulcan Materials Co. (S.C. 1989) 299 S.C. 325, 384 S.E.2d 725. Workers’ Compensation 546(1)

8. —— Mental illness, injury by accident

Full Workers’ Compensation Commission was required to make specific findings that claimant was exposed to unusual and extraordinary conditions at work, and that claimant’s mental breakdown was induced such conditions, in order to award claimant workers’ compensation benefits for mental illness. Frame v. Resort Services Inc. (S.C.App. 2004) 357 S.C. 520, 593 S.E.2d 491. Workers’ Compensation 1753

Claimant’s work conditions as a “deep cover” undercover narcotics police officer were unusual and extraordinary, as required to recover workers’ compensation for a mental or nervous disorder, where over several months claimant experienced death threats, gun incidents with violent drug dealers, high tension confrontations, fear of losing his cover, loss of security as a police officer, and loss of insurance. Shealy v. Aiken County (S.C. 2000) 341 S.C. 448, 535 S.E.2d 438, rehearing denied. Workers’ Compensation 546(1)

Mental or nervous disorders resulting from either physical or emotional stimuli are compensable provided that the emotional stimuli or stressors are incident to or arise from unusual or extraordinary conditions of employment. Matter of Moore (S.C. 1989) 298 S.C. 13, 377 S.E.2d 922.

Assuming that a mental disorder is compensable if it is caused by an unexpected, injury‑causing event, a mental disorder is not compensable as an injury by accident if it either results from exposure to normal working conditions or is brought about by the gradual buildup of emotional distress over a period of time. Yates v. Life Ins. Co. of Georgia (S.C.App. 1987) 291 S.C. 301, 353 S.E.2d 297.

Loss of eyesight by an employee resulting from a suicide attempt was not a compensable injury sustained in an “accident” arising out of employment, where the evidence, including expert medical testimony, although supporting the conclusion that the employee suffered a temporary mental disorder that caused his suicide attempt, failed to show that the temporary mental condition was induced by a sudden, unexpected event but, rather, suggested that it was related to the employee’s general dissatisfaction which his normal working conditions. Yates v. Life Ins. Co. of Georgia (S.C.App. 1987) 291 S.C. 301, 353 S.E.2d 297.

Loss of eyesight by an employee resulting from a suicide attempt was not a compensable injury sustained in an “accident” arising out of employment, where the evidence, including expert medical testimony, although supporting the conclusion that the employee suffered a temporary mental disorder that caused his suicide attempt, failed to show that the temporary mental condition was induced by a sudden, unexpected event but, rather, suggested that it was related to the employee’s general dissatisfaction which his normal working conditions. Yates v. Life Ins. Co. of Georgia (S.C.App. 1987) 291 S.C. 301, 353 S.E.2d 297.

Where there was no evidence of any effect of the work upon claimant’s physique, and it was shown that the climax in his latent nervous or mental condition probably had to come at some time, it was but conjecture to say upon the evidence that there was causal connection between respondent’s work and his nervous breakdown. Fleming v. Appleton Co. (S.C. 1949) 214 S.C. 81, 51 S.E.2d 363.

9. —— Carpal tunnel syndrome, injury by accident

Substantial evidence supported finding that claimant’s carpal tunnel syndrome constituted an “injury by accident” and, thus, qualified as a compensable workers’ compensation injury, where there was no evidence claimant intended or expected to be injured as a result of her repetitive work activity and, despite lack of a definite time of injury, it was uncontested that claimant’s injury was caused by her work activities. Pee v. AVM, Inc. (S.C. 2002) 352 S.C. 167, 573 S.E.2d 785. Workers’ Compensation 1531.7(2)

Claimant’s carpal tunnel syndrome was compensable under the Workers’ Compensation Act as an injury by accident; although claimant experienced her symptoms for some time during her repetitive work activity, there was no indication that she expected or intended the resulting condition of median nerve compression. Pee v. AVM, Inc. (S.C.App. 2001) 344 S.C. 162, 543 S.E.2d 232, rehearing denied, certiorari granted, affirmed 352 S.C. 167, 573 S.E.2d 785. Workers’ Compensation 568.6(2)

10. —— Repetitive motion injuries, injury by accident

The Workers’ Compensation Commission erred when it failed to address the statute governing repetitive trauma injuries when it reviewed workers’ compensation claimant’s application for benefits for work‑related injuries that were caused by her repetitious over‑the‑head work for employer. Murphy v. Owens Corning (S.C.App. 2011) 393 S.C. 77, 710 S.E.2d 454. Workers’ Compensation 1814

A repetitive trauma injury meets the definition of “injury by accident” in that it is an unforeseen injury caused by trauma. Pee v. AVM, Inc. (S.C. 2002) 352 S.C. 167, 573 S.E.2d 785. Workers’ Compensation 568.6(1)

11. —— Miscellaneous injuries, injury by accident

Workers’ compensation claimant’s fall when she stumbled and fell on way to fellow employee’s office was improperly treated as idiopathic and noncompensable, even though claimant could point to no cause of her fall such as deficiency in carpet or hazard at work; clumsiness was not an exception to workers’ compensation. Barnes v. Charter 1 Realty (S.C. 2015) 411 S.C. 391, 768 S.E.2d 651. Workers’ Compensation 649.2

Substantial evidence supported finding that workers’ compensation claimant’s injury was not a result of an idiopathic fall and, thus, was compensable; claimant, who was nurse anesthetist, was preparing to anesthetize a patient and was walking around the patient’s bed when her foot became caught on something and she fell, and although claimant did not know the exact item she tripped over, her shoe was still at the head of the bed when she tried to stand up after her fall, claimant had an explanation for her fall, and although she was not absolutely certain as to what caused her fall, she identified specific, non‑internal reasons for tripping, and claimant showed that the origin of the risk was connected with her employment. Shatto v. McLeod Regional Medical Center (S.C.App. 2014) 408 S.C. 595, 759 S.E.2d 443. Workers’ Compensation 1591

The fact that, due to his physical condition, the exertion required by the ordinary performance of employee’s work for sanitation company may have been too great for him did not make his ruptured aneurysm a compensable accident under workers’ compensation law. Jennings v. Chambers Development Co. (S.C.App. 1999) 335 S.C. 249, 516 S.E.2d 453, rehearing denied, certiorari denied. Workers’ Compensation 535

An employee did not sustain an injury by accident arising out of and in the course of employment where the employee had a history of contact dermatitis, accepted employment as a dishwasher, and consequently experienced contact dermatitis as a consequence of his work. Capers v. Flautt (S.C.App. 1991) 305 S.C. 254, 407 S.E.2d 660.

Where claimant who worked for oil company suffered dysfunction of her immune system caused by chemical sensitivity to gasoline products thereby preventing her from continuing to work, and which condition manifested itself after lengthy period during which vapor recovery system of oil companies loading tanks near where claimant worked was defective, resulting in massive amounts of gasoline being lost in vapor form, and as matter of law there was a cascade, or sudden event which brought to climax cumulative deleterious effects of inhalation of petrochemical vapors in course of claimant’s employment, this was accident within meaning of workers’ compensation law. Grayson v. Gulf Oil Co. (S.C.App. 1987) 292 S.C. 528, 357 S.E.2d 479.

Infection of a tuberculin test wound constitutes an injury by accident. Lee v. Wentworth Mfg. Co. (S.C. 1962) 240 S.C. 165, 125 S.E.2d 7. Workers’ Compensation 530

Incapacity caused by illness from vaccination or inoculation may properly be found to have arisen out of the employment where such treatment is submitted to pursuant to the direction or for the benefit of the employer, but the rule is otherwise where the employee voluntarily avails himself of such treatment solely for his own benefit. Lee v. Wentworth Mfg. Co. (S.C. 1962) 240 S.C. 165, 125 S.E.2d 7.

Where claimant’s knee buckled and was injured as she arose from table in company cafeteria, the injury was result of an ordinary employment of the body unattended by any accidental circumstances and was not compensable. Miller v. Springs Cotton Mills (S.C. 1954) 225 S.C. 326, 82 S.E.2d 458.

Alleged injury to claimant’s leg which occurred while he was pushing a hand truck of cloth up a slight incline, where there was no visible evidence of injury, was not an injury by accident. Burnett v. Appleton Co. (S.C. 1946) 208 S.C. 53, 37 S.E.2d 269.

The act of vaccination itself cannot be said to be an accident in the ordinary sense of the word, as it is foreseen, expected, and intended, but an infection and its immediate entry into the system through the vaccination wound is the intervention of an unlooked for circumstance sufficiently constituting the element of accident, and the vaccination wound and the infection following the vaccination combined to immediately cause and bring about bodily injury is an injury of accidental nature effected through accidental means. Alewine v. Tobin Quarries (S.C. 1945) 206 S.C. 103, 33 S.E.2d 81.

An injury caused by an attack of epilepsy was not by an accident arising out of and in the course of employment. Edge v. Dunean Mills (S.C. 1943) 202 S.C. 189, 24 S.E.2d 268.

Heat prostration which results from the employee’s engaging in the employment, whether due to unusual or extraordinary condition or not, is to be deemed an accidental injury within the meaning of this section [Code 1962 Section 72‑14]. Smith v. Southern Builders (S.C. 1943) 202 S.C. 88, 24 S.E.2d 109. Workers’ Compensation 581

11.5. Idiopathic fall doctrine

An unexplained fall is generally not compensable under Workers’ Compensation Act unless the employment contributed to either the cause or the effect of the fall. Turner v. SAIIA Construction (S.C.App. 2016) 419 S.C. 98, 796 S.E.2d 150, rehearing denied. Workers’ Compensation 608; Workers’ Compensation 615

An idiopathic fall which is not compensable arises from an internal breakdown personal to the employee, thus negating any causal connection. Barnes v. Charter 1 Realty (S.C. 2015) 411 S.C. 391, 768 S.E.2d 651. Workers’ Compensation 649.2

The idiopathic fall doctrine is based on the notion that an idiopathic injury does not stem from an accident, but is brought on by a condition particular to the employee that could have manifested itself anywhere. Barnes v. Charter 1 Realty (S.C. 2015) 411 S.C. 391, 768 S.E.2d 651. Workers’ Compensation 649.2

Idiopathic injuries are generally noncompensable absent evidence the workplace contributed to the severity of the injury. Barnes v. Charter 1 Realty (S.C. 2015) 411 S.C. 391, 768 S.E.2d 651. Workers’ Compensation 618

As an exception to workers’ compensation coverage, the idiopathic doctrine should be strictly construed. Barnes v. Charter 1 Realty (S.C. 2015) 411 S.C. 391, 768 S.E.2d 651. Workers’ Compensation 618

Idiopathic falls are excepted from the general rule that a work‑related injury is compensable. Barnes v. Charter 1 Realty (S.C. 2015) 411 S.C. 391, 768 S.E.2d 651. Workers’ Compensation 649.3

12. Arising out of and in the course of employment

To sustain an award under the Workmen’s Compensation Act, it must appear that the injury resulted from an accident which both “arose out of” and “in the course of” the employment. Williams v South Carolina State Hospital (1965) 245 SC 377, 140 SE2d 601. Bickley v South Carolina Electric & Gas Co. (1972) 259 SC 463, 192 SE2d 866.

The language “injury by accident arising out of and in the course of the employment” requires not only that the injury occur within the period of employment, but also that it arise because of the employment as when the employment is a contributing proximate cause. E. I. Du Pont De Memours Co. v Hall (1956, CA4 SC) 237 F2d 145. Lee v Wentworth Mfg. Co. (1962) 240 SC 165, 125 SE2d 7. Sola v Sunny Slope Farms (1964) 244 SC 6, 135 SE2d 321.

The phrases “arising out of” and “in the course of employment” are used conjunctively. One of these elements without the other will not sustain an award. The two elements must coexist. Dicks v Brooklyn Cooperage Co. (1946) 208 SC 139, 37 SE2d 286. Brady v Sacony of St. Matthews (1957) 232 SC 84, 101 SE2d 50.

The words “arose out of” refer to the origin or the cause of the accident while the words “in the course of employment” refer to the time, place and circumstances under which the accident occurs. Even though the injury was not one that could have been foreseen or expected, it may be that after the event, it may be seen to have had its origin in the nature of the employment. Thompson v J. A. Jones Const. Co. (1942) 199 SC 304, 19 SE2d 226. Dicks v Brooklyn Cooperage Co. (1946) 208 SC 139, 37 SE2d 286.

“Arising out of employment” and “in the course of employment,” as used to define compensable injury under the Workers’ Compensation Law, are not synonymous; rather, both parts must exist simultaneously before recovery is allowed. Nicholson v. South Carolina Dept. of Social Services (S.C.App. 2013) 405 S.C. 537, 748 S.E.2d 256; Ardis v. Combined Ins. Co. (S.C.App. 2008) 380 S.C. 313, 669 S.E.2d 628, rehearing denied; Houston v. Deloach & Deloach (S.C.App. 2008) 378 S.C. 543, 663 S.E.2d 85; Hall v. Desert Aire, Inc. (S.C.App. 2007) 376 S.C. 338, 656 S.E.2d 753, rehearing denied; Gray v. Club Group, Ltd. (S.C.App. 2000) 339 S.C. 173, 528 S.E.2d 435, rehearing denied, certiorari denied; Gibson v. Spartanburg School Dist. No. 3 (S.C.App. 2000) 338 S.C. 510, 526 S.E.2d 725, rehearing denied, certiorari denied; Hicks v. Piedmont Cold Storage, Inc. (S.C.App. 1996) 324 S.C. 628, 479 S.E.2d 831, rehearing denied, certiorari granted, reversed 335 S.C. 46, 515 S.E.2d 532; Gory v Monarch Mills (1946) 208 SC 86, 37 SE2d 291. Branch v Pacific Mills (1944) 205 SC 353, 32 SE2d 1.

To be compensable under Workers’ Compensation Act, injury must both arise out of and occur in course of employment; “arising out of” prong refers to origin and cause of accident, whereas “in the course of” prong refers to time, place, and circumstances under which the injury occurred. Hall v. Desert Aire, Inc. (S.C.App. 2007) 376 S.C. 338, 656 S.E.2d 753, rehearing denied; Baggott v. Southern Music, Inc. (S.C. 1998) 330 S.C. 1, 496 S.E.2d 852, rehearing denied.

“Arising out of” in statute on awarding workers’ compensation for accidents arising out of and in the course of employment refers to the injury’s origin and cause, but “in the course of” refers to the injury’s time, place, and circumstances. Barnes v. Charter 1 Realty (S.C. 2015) 411 S.C. 391, 768 S.E.2d 651. Workers’ Compensation 606

An injury is excluded from compensability under the Workers’ Compensation Act when it comes from a hazard to which the workmen would have been equally exposed apart from the employment. Nicholson v. South Carolina Dept. of Social Services (S.C.App. 2013) 405 S.C. 537, 748 S.E.2d 256, rehearing denied, reversed 411 S.C. 381, 769 S.E.2d 1. Workers’ Compensation 612

For purposes of provision of Workers’ Compensation Act requiring that, to be compensable, an injury by accident must be one arising out of and in the course of employment, phrase “in the course of the employment” refers to the time, place, and circumstances under which the accident occurred. Houston v. Deloach & Deloach (S.C.App. 2008) 378 S.C. 543, 663 S.E.2d 85. Workers’ Compensation 615

In determining if an accident arose out of and in the course of employment for worker’s compensation purposes, each case must be decided with reference to its own attendant circumstances. Hall v. Desert Aire, Inc. (S.C.App. 2007) 376 S.C. 338, 656 S.E.2d 753, rehearing denied. Workers’ Compensation 604

While an injury must both arise out of and in the course of employment for an employee to recover for an injury under the Workers’ Compensation Act, there are circumstances when injuries arising out of acts outside the scope of the employee’s regular duties may be compensable. Hall v. Desert Aire, Inc. (S.C.App. 2007) 376 S.C. 338, 656 S.E.2d 753, rehearing denied. Workers’ Compensation 617

“Arising out of” in statute requiring injury to arise out of and in the course of employment refers to the injury’s origin and cause, and “in the course of” refers to the injury’s time, place, and circumstances. Grant v. Grant Textiles (S.C. 2007) 372 S.C. 196, 641 S.E.2d 869, rehearing denied. Workers’ Compensation 608; Workers’ Compensation 615

To receive a worker’s compensation award in South Carolina, an employee must show that her injury arose out of and in the course of employment; while the term in the course of refers to the time, place, and circumstances of the accident, the term arising out of refers to the origin or the cause of the accident. Stone v. Traylor Brothers, Inc. (S.C.App. 2004) 360 S.C. 271, 600 S.E.2d 551, rehearing denied, certiorari denied. Workers’ Compensation 604; Workers’ Compensation 610; Workers’ Compensation 617

To be entitled to workers’ compensation, an employee need not necessarily be engaged at the time of injury in the actual performance of his work; it is sufficient if he is upon the employer’s premises, occupying himself consistently with his contract of hire in some manner pertaining to or incidental to his employment. Simmons v. City of Charleston (S.C.App. 2002) 349 S.C. 64, 562 S.E.2d 476, rehearing denied, certiorari dismissed. Workers’ Compensation 617

“Arising out of” employment requirement for injury to be compensable under the Workers’ Compensation Act refers to the injury’s origin and cause, whereas the “in the course of” employment requirement refers to the time, place and circumstances under which the injury occurred. Gibson v. Spartanburg School Dist. No. 3 (S.C.App. 2000) 338 S.C. 510, 526 S.E.2d 725, rehearing denied, certiorari denied. Workers’ Compensation 610; Workers’ Compensation 617

Under workers’ compensation law, an injury “arises out of” employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal relationship between the conditions under which the work is to be performed and the resulting injury. Aughtry v. Abbeville County School Dist. No. 60 (S.C.App. 1998) 332 S.C. 453, 504 S.E.2d 830, rehearing denied, reversed 340 S.C. 604, 533 S.E.2d 885. Workers’ Compensation 610

Under workers’ compensation law, an injury occurs “in the course of” employment when it occurs within the period of employment at a place where the employee reasonably may be in the performance of his duties and while fulfilling those duties or engaged in something incidental thereto. Aughtry v. Abbeville County School Dist. No. 60 (S.C.App. 1998) 332 S.C. 453, 504 S.E.2d 830, rehearing denied, reversed 340 S.C. 604, 533 S.E.2d 885. Workers’ Compensation 617

Injury occurs in course of employment, for workers’ compensation purposes, when it occurs within period of employment at place where employee reasonably may be in performance of his duties and while fulfilling those duties or engaged in something incidental thereto. Baggott v. Southern Music, Inc. (S.C. 1998) 330 S.C. 1, 496 S.E.2d 852, rehearing denied. Workers’ Compensation 617

Work‑connected activity goes beyond direct services performed for employer and includes at least some ministration to personal comfort and human wants of employee, for purposes of determining whether workers’ compensation claimant sustained injury by accident arising out of and in course of employment. Osteen v. Greenville County School Dist. (S.C.App. 1996) 323 S.C. 432, 475 S.E.2d 775, rehearing denied, certiorari granted, reversed 333 S.C. 43, 508 S.E.2d 21. Workers’ Compensation 652

An award will not be made under the Workers’ Compensation Act unless an employment relationship existed at the time of the alleged injury. Spivey v. D.G. Const. Co. (S.C.App. 1996) 321 S.C. 19, 467 S.E.2d 117, rehearing denied. Workers’ Compensation 233

Whether the condition of a Workers’ Compensation claimant was accelerated or aggravated by an accidental injury is a factual matter for the commission, and its finding of fact based on conflicting evidence may not be set aside. Owings v. Anderson County Sheriff’s Dept. (S.C. 1993) 315 S.C. 297, 433 S.E.2d 869, rehearing denied. Workers’ Compensation 1939.11(7)

Code 1962 Section 72‑14 [Code 1976 Section 42‑1‑160] contains a two‑pronged test: “the injury must arise out of the employment and simultaneously coexist in the course of the employment.” Kinsey v. Champion Am. Service Center (S.C. 1977) 268 S.C. 177, 232 S.E.2d 720.

The two elements “arise out of” and “in the course of” must coexist and be concurrent and simultaneous, for one without the other will not sustain an award; yet the two are so entwined that they are usually considered together in the reported cases, and a discussion of one of them involves the other. Douglas v. Spartan Mills, Startex Division (S.C. 1965) 245 S.C. 265, 140 S.E.2d 173.

This section [Code 1962 Section 72‑14] does not confine the injuries which it embraces to those arising out of and in the course of the employment during regular working hours; but, by its very terms, embraces all injuries by accident arising out of and in the course of the employment. Eargle v. South Carolina Elec. & Gas Co. (S.C. 1944) 205 S.C. 423, 32 S.E.2d 240. Workers’ Compensation 706

13. Risks peculiar to work

In order for the injury to arise out of the employment, the causative danger must be peculiar to the work and not common to the neighborhood; it must be incidental to the character of the business and not independent of the relation of master and servant; but it need not to have been foreseen or expected, but after the event it must appear to have had its origin in a risk connected with the employment, and to have flowed from that source as a rational consequence. Douglas v Spartan Mills (1965) 245 SC 265, 140 SE2d 173. Carter v Penney Tire & Recapping Co. (1973) 261 SC 341, 200 SE2d 64.

A workers’ compensation claimant’s injury is only compensable if the source of the injury was a risk peculiar to the work and not common to the neighborhood. Nicholson v. South Carolina Dept. of Social Services (S.C.App. 2013) 405 S.C. 537, 748 S.E.2d 256, rehearing denied, reversed 411 S.C. 381, 769 S.E.2d 1. Workers’ Compensation 612

For an injury to arise out of the employment for workers’ compensation purposes, the causative danger must be peculiar to the work and not common to the neighborhood, it must be incidental to the character of the business and not independent of the relation of master and servant, and it need not have been foreseen or expected, but after the event it must appear to have had its origin in a risk connected with the employment, and to have flowed from that source as a rational consequence. Hall v. Desert Aire, Inc. (S.C.App. 2007) 376 S.C. 338, 656 S.E.2d 753, rehearing denied. Workers’ Compensation 610; Workers’ Compensation 613

Under the “increased‑risk doctrine” for workers’ compensation purposes, an injury arises out of the employment if some risk inherent to the employment was a contributing cause of the injury; the risk must be one to which the general public would not be equally exposed. Simmons v. City of Charleston (S.C.App. 2002) 349 S.C. 64, 562 S.E.2d 476, rehearing denied, certiorari dismissed. Workers’ Compensation 610

In order to satisfy requirement that injury “arise out of employment,” for workers’ compensation purposes, causative danger must be peculiar to work and not common to neighborhood. Hicks v. Piedmont Cold Storage, Inc. (S.C.App. 1996) 324 S.C. 628, 479 S.E.2d 831, rehearing denied, certiorari granted, reversed 335 S.C. 46, 515 S.E.2d 532. Workers’ Compensation 612

14. Arising out of employment—In general

The term “arising out of” as used to define compensable injury under the Workers’ Compensation Law, refers to the origin or cause of the accident. Nicholson v. South Carolina Dept. of Social Services (S.C.App. 2013) 405 S.C. 537, 748 S.E.2d 256; Houston v. Deloach & Deloach (S.C.App. 2008) 378 S.C. 543, 663 S.E.2d 85; Eaddy v. Smurfit‑Stone Container Corp. (S.C.App. 2003) 355 S.C. 154, 584 S.E.2d 390, rehearing denied; Osteen v. Greenville County School Dist. (S.C.App. 1996) 323 S.C. 432, 475 S.E.2d 775, rehearing denied, certiorari granted, reversed 333 S.C. 43, 508 S.E.2d 21; Bickley v South Carolina Electric & Gas Co. (1972) 259 SC 463, 192 SE2d 866; Williams v South Carolina State Hospital (1965) 245 SC 377, 140 SE2d 601; Brady v Sacony of St. Matthews (1957) 232 SC 84, 101 SE2d 50; Willard v Commissioners of Public Works (1951) 219 SC 477, 65 SE2d 874; Radcliffe v Southern Aviation School (1946) 209 SC 411, 40 SE2d 626.

An injury arises out of employment, within the meaning of the Workers’ Compensation Law, when there is apparent to the rational mind, upon consideration of all the circumstances, a causal relationship between the conditions under which the work is to be performed and the resulting injury. Nicholson v. South Carolina Dept. of Social Services (S.C.App. 2013) 405 S.C. 537, 748 S.E.2d 256; Jennings v. Chambers Development Co. (S.C.App. 1999) 335 S.C. 249, 516 S.E.2d 453, rehearing denied, certiorari denied; Justice v. BMG Distribution, Inc. (S.C. 1995) 318 S.C. 359, 458 S.E.2d 35, rehearing denied.

For purposes of workers’ compensation statute providing that, to be compensable, an accidental injury must arise out of and in the course of employment, “arising out of” refers to the injury’s origin and cause, whereas “in the course of” refers to the injury’s time, place, and circumstances. Turner v. SAIIA Construction (S.C.App. 2016) 419 S.C. 98, 796 S.E.2d 150, rehearing denied. Workers’ Compensation 608; Workers’ Compensation 615

In finding a recreational or social activity is within the course of employment, courts in workers compensation cases consider whether the activity falls within one of the following factors: (1) it occurs on the premises during a lunch or recreation period as a regular incident of employment; (2) the employer, by expressly or impliedly requiring participation, or by making the activity part of the services of an employee, brings the activity within the orbit of the employment; or (3) the employer derives substantial direct benefit from the activity beyond the intangible value of improvement in employee health and morale that is common to all kinds of recreation and social life. Whigham v. Jackson Dawson Communications (S.C. 2014) 410 S.C. 131, 763 S.E.2d 420, rehearing denied. Workers’ Compensation 664

For an injury to “arise out of” employment for workers’ compensation purposes, it need not have been foreseen or expected, but after the event, it must appear to have originated in a risk connected with the employment and to have come from that source as a rational consequence. Ardis v. Combined Ins. Co. (S.C.App. 2008) 380 S.C. 313, 669 S.E.2d 628, rehearing denied. Workers’ Compensation 610

If the injury can be seen to have followed as a natural incident of the work and to have been contemplated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment, then it arises “out of” the employment for workers’ compensation purposes. Hall v. Desert Aire, Inc. (S.C.App. 2007) 376 S.C. 338, 656 S.E.2d 753, rehearing denied. Workers’ Compensation 610

For the purpose of a workers’ compensation claim, the injury need not be expected or even foreseeable, but it must appear to have had its origin in a risk connected with the employment, and to have flowed from that source as a rational consequence. Stone v. Traylor Brothers, Inc. (S.C.App. 2004) 360 S.C. 271, 600 S.E.2d 551, rehearing denied, certiorari denied. Workers’ Compensation 610; Workers’ Compensation 613

An employee who becomes sick or dies of natural causes on the job does not suffer an accident arising out of employment, for workers’ compensation purposes, because the condition is a natural result or consequence that might be termed normal and to be expected. South Carolina Second Injury Fund v. Liberty Mut. Ins. Co. (S.C.App. 2003) 353 S.C. 117, 576 S.E.2d 199. Workers’ Compensation 610

Final determination of witness credibility and the weight to be accorded evidence is reserved to the Workers’ Compensation Commission, and it is not the task of the court to weigh the evidence as found by the Commission. Sharpe v. Case Produce, Inc. (S.C. 1999) 336 S.C. 154, 519 S.E.2d 102. Workers’ Compensation 1939.6

Phrase “arising out of” in workers’ compensation statute providing that injury by accident must be one arising out of and in course of employment to be compensable refers to injury’s origin and cause. Hicks v. Piedmont Cold Storage, Inc. (S.C.App. 1996) 324 S.C. 628, 479 S.E.2d 831, rehearing denied, certiorari granted, reversed 335 S.C. 46, 515 S.E.2d 532. Workers’ Compensation 610

The term “arising out of” in the Workers’ Compensation Act refers to the time, place, and circumstances under which the accident occurred. Owings v. Anderson County Sheriff’s Dept. (S.C. 1993) 315 S.C. 297, 433 S.E.2d 869, rehearing denied. Workers’ Compensation 617

An injury may be regarded as arising out of the employment if it resulted from a risk or danger to which the workman was exposed by reason of being engaged in the performance of his duties although such risk or danger was not inherent in and not necessarily essential to the activities of the employment. Jordan v. Dixie Chevrolet (S.C. 1950) 218 S.C. 73, 61 S.E.2d 654. Workers’ Compensation 610

An accident arises out of the employment within the meaning of this section [Code 1962 Section 72‑14] when it arises because of employment and in dealing with the scope of employment of employee, the terms of which are not usually in writing, the Workmen’s Compensation Act should be construed with reasonable liberality. Lanford v. Clinton Cotton Mills (S.C. 1944) 204 S.C. 423, 30 S.E.2d 36. Workers’ Compensation 610

15. —— Proximate cause, arising out of employment

An injury which cannot fairly be traced to the employment as a contributing proximate cause, and which comes from a hazard to which the workmen would have been equally exposed apart from the employment, does not arise out of the employment. Douglas v Spartan Mills (1965) 245 SC 265, 140 SE2d 173. Carter v Penney Tire & Recapping Co. (1973) 261 SC 341, 200 SE2d 64.

If the injury can be seen to have followed as a natural incident of the work and to have been contemplated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment, then it arises “out of” the employment. But it excludes an injury which cannot fairly be traced to the employment as a contributing proximate cause and which comes from a hazard to which the workmen would have been equally exposed apart from the employment. The causative danger must be peculiar to the work and not common to the neighborhood. Cyrus v Miller Tire Service (1946) 208 SC 545, 38 SE2d 761. Willard v Commissioners of Public Works (1951) 219 SC 477, 65 SE2d 874.

An injury “arises out of” employment, as required for the injury to be compensable under the Workers’ Compensation Act, if it is proximately caused by the employment. Turner v. SAIIA Construction (S.C.App. 2016) 419 S.C. 98, 796 S.E.2d 150, rehearing denied. Workers’ Compensation 610

For purposes of finding an injury to be compensable under the workers’ compensation laws, an injury arises out of employment if it is proximately caused by the employment; therefore it must be apparent to the rational mind, considering all the circumstances, that a causal relationship exists between the conditions under which the work is performed and the resulting injury. Nicholson v. S.C. Dept. of Social Services (S.C. 2015) 411 S.C. 381, 769 S.E.2d 1. Workers’ Compensation 610

A workers’ compensation claimant’s injury arises out of employment if it is proximately caused by the employment. Barnes v. Charter 1 Realty (S.C. 2015) 411 S.C. 391, 768 S.E.2d 651. Workers’ Compensation 610

Injury arises out of employment, for workers’ compensation purposes, when there is apparent to the rational mind, upon consideration of all the circumstances, a causal relationship between the conditions under which the work is to be performed and the resulting injury. Crisp v. SouthCo., Inc. (S.C. 2013) 401 S.C. 627, 738 S.E.2d 835. Workers’ Compensation 610

An injury arises out of employment if a causal relationship between the conditions under which the work is to be performed and the resulting injury is apparent to the rational mind, upon consideration of all the circumstances. McCuen v. BMW Mfg. Corp. (S.C.App. 2009) 383 S.C. 19, 677 S.E.2d 28. Workers’ Compensation 610

For an injury to “arise out of” employment, as would support compensability of injury under Workers’ Compensation Act, it must be apparent to the rational mind, considering all the circumstances, that a causal relationship exists between the conditions under which the work is performed and the resulting injury. Houston v. Deloach & Deloach (S.C.App. 2008) 378 S.C. 543, 663 S.E.2d 85. Workers’ Compensation 610

For an injury to “arise out of” employment, as would support compensability of injury under Workers’ Compensation Act, the injury must be proximately caused by the employment. Houston v. Deloach & Deloach (S.C.App. 2008) 378 S.C. 543, 663 S.E.2d 85. Workers’ Compensation 610

For an injury to arise out of the employment for workers’ compensation purposes, the injury must be fairly traced to the employment as a contributing proximate cause and cannot be the result of conditions to which the worker would be equally exposed outside of the employment. Hall v. Desert Aire, Inc. (S.C.App. 2007) 376 S.C. 338, 656 S.E.2d 753, rehearing denied. Workers’ Compensation 609; Workers’ Compensation 612

An accident arises out of employment for workers’ compensation purposes when the employment is a contributing proximate cause of the accident. Hall v. Desert Aire, Inc. (S.C.App. 2007) 376 S.C. 338, 656 S.E.2d 753, rehearing denied. Workers’ Compensation 609

For an injury to “arise out of” employment, the injury must be proximately caused by the employment; the injury arises out of employment when there is a causal connection between the conditions under which the work is required to be performed and the resulting injury. Grant v. Grant Textiles (S.C. 2007) 372 S.C. 196, 641 S.E.2d 869, rehearing denied. Workers’ Compensation 609; Workers’ Compensation 610

Industrial Commission’s finding that death of worker who suffered fatal stroke while engaging in sexual intercourse at home was not proximately caused by accident arising out of employment was supported by substantial evidence, including medical testimony that deceased had a berry aneurism which frequently hemorrhaged during sexual intercourse. Nawa v. Wackenhut Corp. (S.C.App. 1986) 288 S.C. 250, 341 S.E.2d 800. Workers’ Compensation 15

An accident “arises out of the employment” when the employment is a contributing proximate cause. Beam v. State Workmen’s Compensation Fund (S.C. 1973) 261 S.C. 327, 200 S.E.2d 83. Workers’ Compensation 610

16. —— Personal comfort doctrine, arising out of employment

A fundamental premise underlying the personal comfort doctrine, which provides that an injury sustained during on‑the‑job acts necessary to an employee’s life, comfort, and convenience are deemed to have arisen out of employment for workers’ compensation purposes, is that while certain activities undertaken by an employee may immediately benefit the employee in a personal sense, a benefit ultimately inures to the employer as well. Ardis v. Combined Ins. Co. (S.C.App. 2008) 380 S.C. 313, 669 S.E.2d 628, rehearing denied. Workers’ Compensation 652

Such on‑the‑job acts as are necessary to the life, comfort, and convenience of the employee while at work, although strictly personal and not acts of service, are “incidental” to the service, and injury sustained in the performance thereof is deemed to have arisen out of the employment for workers’ compensation purposes. Ardis v. Combined Ins. Co. (S.C.App. 2008) 380 S.C. 313, 669 S.E.2d 628, rehearing denied. Workers’ Compensation 652

On‑the‑job acts necessary to an employee’s life, comfort, and convenience at work, such that an injury sustained in the performance thereof is deemed to have arisen out of employment for workers’ compensation purposes, include imperative acts such as eating, drinking, smoking, seeking relief from discomfort, preparing to begin or quit work, and resting or sleeping. Ardis v. Combined Ins. Co. (S.C.App. 2008) 380 S.C. 313, 669 S.E.2d 628, rehearing denied. Workers’ Compensation 653; Workers’ Compensation 654; Workers’ Compensation 659; Workers’ Compensation 660

The “personal comfort doctrine” aids a court in determining whether, and under what circumstances, entirely personal activities engaged in by workers’ compensation claimant at work may be considered incidental to employment, for purposes of determining whether injury arises out of employment. Gibson v. Spartanburg School Dist. No. 3 (S.C.App. 2000) 338 S.C. 510, 526 S.E.2d 725, rehearing denied, certiorari denied. Workers’ Compensation 652

The “personal comfort doctrine” provides that such acts as are necessary to the life, comfort, and convenience of the servant while at work, though strictly personal to himself, and not acts of service, are incidental to the service, and injury sustained in the performance thereof is deemed to have arisen out of the employment, for purposes of Workers’ Compensation Act. Gibson v. Spartanburg School Dist. No. 3 (S.C.App. 2000) 338 S.C. 510, 526 S.E.2d 725, rehearing denied, certiorari denied. Workers’ Compensation 652

Activity in which workers’ compensation claimant was engaged when she was injured fell squarely within personal comfort doctrine and, therefore, claimant’s injury arose in course and scope of her employment; employee was injured during working hours, on premises, while engaged in activity permitted by employer and, moreover, even if activity was entirely personal to claimant, her injury was compensable because deviation from employment was insubstantial. Osteen v. Greenville County School Dist. (S.C.App. 1996) 323 S.C. 432, 475 S.E.2d 775, rehearing denied, certiorari granted, reversed 333 S.C. 43, 508 S.E.2d 21. Workers’ Compensation 652

17. —— Causal connection, arising out of employment

For an injury to “arise out of” employment for workers’ compensation purposes, the injury must be proximately caused by the employment; the injury arises out of employment when there is a causal connection between the conditions under which the work is required to be performed and the resulting injury. Ardis v. Combined Ins. Co. (S.C.App. 2008) 380 S.C. 313, 669 S.E.2d 628, rehearing denied; Hall v. Desert Aire, Inc. (S.C.App. 2007) 376 S.C. 338, 656 S.E.2d 753, rehearing denied; Stone v. Traylor Brothers, Inc. (S.C.App. 2004) 360 S.C. 271, 600 S.E.2d 551, rehearing denied, certiorari denied; Eaddy v. Smurfit‑Stone Container Corp. (S.C.App. 2003) 355 S.C. 154, 584 S.E.2d 390, rehearing denied; Broughton v. South of the Border (S.C.App. 1999) 336 S.C. 488, 520 S.E.2d 634, rehearing denied, certiorari denied; Osteen v. Greenville County School Dist. (S.C. 1998) 333 S.C. 43, 508 S.E.2d 21, rehearing denied; Hicks v. Piedmont Cold Storage, Inc. (S.C.App. 1996) 324 S.C. 628, 479 S.E.2d 831, rehearing denied, certiorari granted, reversed 335 S.C. 46, 515 S.E.2d 532; Owings v. Anderson County Sheriff’s Dept. (S.C. 1993) 315 S.C. 297, 433 S.E.2d 869, rehearing denied; Carter v Penney Tire & Recapping Co. (1973) 261 SC 341, 200 SE2d 64.

An award must not be based on surmise, conjecture or speculation. Fowler v Abbott Motor Co. (1960) 236 SC 226, 113 SE2d 737. Glover v Columbia Hospital of Richland County (1960) 236 SC 410, 114 SE2d 565. Leonard v Georgetown County (1956) 230 SC 388, 95 SE2d 777. Wilson v Darlington (1956) 229 SC 62, 91 SE2d 714. Bagwell v Ernest Burwell, Inc. (1955) 227 SC 444, 88 SE2d 611. Kennedy v Williamsburg County (1963) 242 SC 477, 131 SE2d 512.

For injury to arise out of employment, as required for injury to be compensable under the Workers’ Compensation Act, the causative danger need not have been foreseen or expected, but after the event it must appear to have had its origin in a risk connected with the employment, and to have flowed from that source as a rational consequence. Turner v. SAIIA Construction (S.C.App. 2016) 419 S.C. 98, 796 S.E.2d 150, rehearing denied. Workers’ Compensation 609

For an injury to “arise out of employment,” as required for the injury to be compensable under the Workers’ Compensation Act, there must be a causal connection between the conditions under which the work is required to be performed and the resulting injury. Turner v. SAIIA Construction (S.C.App. 2016) 419 S.C. 98, 796 S.E.2d 150, rehearing denied. Workers’ Compensation 1358

Substantial evidence supported finding that workers’ compensation claimant’s death occurred in the course and scope of his employment, even though an autopsy revealed claimant had a brain aneurysm; claimant was a tour bus driver, his employment placed him in at increased danger as it required him to drive a bus at a high rate of speed on an interstate, expert testimony indicated that claimant died due to injuries from a motor vehicle accident and not due to a brain aneurysm. Thomas v. 5 Star Transp. (S.C.App. 2015) 412 S.C. 1, 770 S.E.2d 183, rehearing denied, certiorari denied. Workers’ Compensation 1531.8; Workers’ Compensation 1581

For an accidental injury to be compensable under the workers’ compensation scheme there must be a causal connection between the employment and the injury; that is the test and the claimant need prove nothing more. Nicholson v. S.C. Dept. of Social Services (S.C. 2015) 411 S.C. 381, 769 S.E.2d 1. Workers’ Compensation 609

The Workers’ Compensation Act was designed to supplant tort law by providing a no‑fault system focusing on quick recovery, relatively ascertainable awards, and limited litigation; therefore, an employee need only prove a causal connection between the conditions under which the work is required to be performed and the resulting injury. Nicholson v. S.C. Dept. of Social Services (S.C. 2015) 411 S.C. 381, 769 S.E.2d 1. Workers’ Compensation 11; Workers’ Compensation 1362

A workers’ compensation claimant’s injury is not compensable absent some causal connection to the workplace, or in other words, but for the claimant being at work, the injury would not have occurred; it does not require claimant to prove her injury is entirely unique to her employment, for any other interpretation would seriously undermine the law of workers’ compensation. Nicholson v. S.C. Dept. of Social Services (S.C. 2015) 411 S.C. 381, 769 S.E.2d 1. Workers’ Compensation 609

Injury sustained by workers’ compensation claimant in a non‑idiopathic fall at work when her shoe “frictioned” the carpet was causally related to her employment, and thus, her injuries arose out of her employment and she was entitled to workers’ compensation, regardless of whether or not her fall was the result of a hazard, a special condition, or peculiar to her employment; claimant was at work on the way to a meeting when she tripped and fell, and the circumstances of her employment required her to walk down the hallway to perform her responsibilities, and it was in the course of those duties that she sustained her injuries. Nicholson v. S.C. Dept. of Social Services (S.C. 2015) 411 S.C. 381, 769 S.E.2d 1. Workers’ Compensation 649.3

Workers’ compensation claimant’s fall when she stumbled and fell on way to fellow employee’s office arose out of her employment, making her injuries compensable; claimant was performing work task when she tripped and fell, and causal connection existed between her employment and injuries. Barnes v. Charter 1 Realty (S.C. 2015) 411 S.C. 391, 768 S.E.2d 651. Workers’ Compensation 649.3

For a workers’ compensation claimant’s injury to arise out of employment, there must be a causal connection between the conditions under which the work is required to be performed and the resulting injury. Barnes v. Charter 1 Realty (S.C. 2015) 411 S.C. 391, 768 S.E.2d 651. Workers’ Compensation 610

An injury arises out of employment within meaning of Workers’ Compensation Law when there is apparent to the rational mind, upon consideration of all the circumstances, a causal relationship between the conditions under which the work is to be performed and the resulting injury. Whigham v. Jackson Dawson Communications (S.C. 2014) 410 S.C. 131, 763 S.E.2d 420, rehearing denied. Workers’ Compensation 609

The carpet in Department of Social Services’ (DSS) building, upon which workers’ compensation claimant tripped and fell, was not a hazard, a special condition, or peculiar to DSS employment, and therefore claimant’s injuries were not causally connected to work conditions, as required for the injuries to have arisen out of employment, where carpet in building was not distinguishable in character from other carpet, the carpeted floor was level and free from defect, the carpet did not buckle or move when claimant’s foot scuffed it, and claimant fell when her shoe “frictioned” the carpet. Nicholson v. South Carolina Dept. of Social Services (S.C.App. 2013) 405 S.C. 537, 748 S.E.2d 256, rehearing denied, reversed 411 S.C. 381, 769 S.E.2d 1. Workers’ Compensation 649.3

An injury arises “out of employment”, as required for workers’ compensation benefits, if a causal relationship between the conditions under which the work is to be performed and the resulting injury is apparent to the rational mind, upon consideration of all the circumstances. Bartley v. Allendale County School Dist. (S.C.App. 2009) 381 S.C. 262, 672 S.E.2d 809, rehearing denied, certiorari granted, reversed 392 S.C. 300, 709 S.E.2d 619. Workers’ Compensation 610

In deciding whether substantial evidence supports a finding of causation in a workers’ compensation case, it is appropriate to consider both the lay and expert evidence. Hall v. Desert Aire, Inc. (S.C.App. 2007) 376 S.C. 338, 656 S.E.2d 753, rehearing denied. Workers’ Compensation 1492

Employee’s injury, sustained when he was on smoking break and was accidentally shot by colleague’s gun, did not “arise out of” his employment with employer, and thus was not compensable, because there was no nexus connecting employee’s job as paramedic to his colleague’s handgun that they were examining during smoke break; gun was not naturally found on employer’s premises, and was in no way connected to employer’s business. Dukes v. Rural Metro Corp. (S.C. 2003) 356 S.C. 107, 587 S.E.2d 687. Workers’ Compensation 701

Workers’ compensation claimant failed to show causal connection between her fall and her employment, and, thus, was not entitled to benefits for idiopathic fall, despite lack of medical evidence establishing that claimant suffered from pathological condition causing internal breakdown which resulted in her fall, where there was no evidence offered as to why claimant fell and she explained at the time that her leg just gave out. Crosby v. Wal‑Mart Store, Inc. (S.C.App. 1998) 330 S.C. 489, 499 S.E.2d 253, rehearing denied, certiorari denied. Workers’ Compensation 1591

Where employee suffers idiopathic fall while standing on level surface, and in the course of fall, hits no machinery, furniture, or other objects such as would contribute to effect of fall, workers’ compensation benefits are not recoverable. Crosby v. Wal‑Mart Store, Inc. (S.C.App. 1998) 330 S.C. 489, 499 S.E.2d 253, rehearing denied, certiorari denied. Workers’ Compensation 649.2

An accident “arises out of employment,” within the meaning of the Workers’ Compensation Act, when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. If the injury can been seen to have followed as a natural incident of the work and as a result of the exposure occasioned by the nature of the employment, then it arises out of the employment. Holley v. Owens Corning Fiberglas Corp. (S.C.App. 1990) 301 S.C. 519, 392 S.E.2d 804, certiorari granted, opinion adopted 302 S.C. 518, 397 S.E.2d 377. Workers’ Compensation 606

Circuit judge erred in reversing Industrial Commission opinion denying claimant additional benefits where record contained testimony discounting any connection between claimant’s elevated blood pressure, his hiatal hernia, his ulcer, and the 1971 accident. Rogers v. Watkins Motor Lines, Inc. (S.C. 1978) 270 S.C. 238, 241 S.E.2d 744. Workers’ Compensation 2061

The lay testimony of the employee himself unsupported by any medical evidence was sufficient to support the finding of causal connection between the accident and the disability suffered by him. Arnold v. Benjamin Booth Co. (S.C. 1971) 257 S.C. 337, 185 S.E.2d 830.

That the deceased’s fall occurred in the course of his employment alone furnishes no basis for an award. It must be further shown either that the cause of the fall or of the resulting injury bore some special relation to his work or to the conditions under which it was performed. Turner v. Campbell Soup Co. (S.C. 1969) 252 S.C. 446, 166 S.E.2d 817.

The inquiry must be whether the employment contributed to the effect of the fall. If, except for the employment, the fall, though due to a cause not related to the employment, would not have carried the consequences it did, then causal connection is established between the injury and employment, and the accidental injury arose out of the employment. The employment has subjected the workman to a special danger which in fact resulted in injury. Turner v. Campbell Soup Co. (S.C. 1969) 252 S.C. 446, 166 S.E.2d 817.

Judge erred in reversing the compensation award for lack of competent evidence proving causal connection between claimant’s injury and his disability. Chapman v. Foremost Dairies, Inc. (S.C. 1967) 249 S.C. 438, 154 S.E.2d 845.

A “possibility” is not enough to show that a workman’s injury arose out of and in the course of his employment. Fowler v. Abbott Motor Co. (S.C. 1960) 236 S.C. 226, 113 S.E.2d 737. Workers’ Compensation 1487

Where a volunteer fireman died of burns received in fire which he accidently caused in his own workshop, no recovery was allowed in the absence of some proof that he was actually fighting the fire when he received his injuries and did not receive injuries from the explosion which caused the fire. Wilson v. City of Darlington (S.C. 1956) 229 S.C. 62, 91 S.E.2d 714.

Compensation should not be awarded where an employee suffers an injury or dies as a result of striking his head against the concrete floor of this employer’s premises during the course of his employment, when the cause of the fall is wholly unrelated to his employment. Bagwell v. Ernest Burwell, Inc. (S.C. 1955) 227 S.C. 444, 88 S.E.2d 611. Workers’ Compensation 649.3

Where deceased’s fall occurred in the course of his employment, this alone furnishes no basis for an award. It must be further shown either that the cause of the fall or of the resulting injury bore some special relation to his work or to the conditions under which it was performed. Bagwell v. Ernest Burwell, Inc. (S.C. 1955) 227 S.C. 444, 88 S.E.2d 611.

Evidence held to support finding that employee’s death resulted from pneumonia which was caused or accelerated by his having repaired a roof, in the course of his employment, on a raw, cold day when he was suffering from a cold, and that death was therefore the result of an accident arising out of the employment. Hiers v. Brunson Const. Co. (S.C. 1952) 221 S.C. 212, 70 S.E.2d 211.

Evidence insufficient to establish causal connection between tumor of testicle and industrial accident. Hines v. Pacific Mills (S.C. 1949) 214 S.C. 125, 51 S.E.2d 383.

When employee received accidental burn on leg and died a few weeks later, the autopsy showing that the immediate cause of his death was arteriosclerosis, his death was not the result of his injuries. Mack v. Branch No. 12, Post Exchange, Fort Jackson (S.C. 1945) 207 S.C. 258, 35 S.E.2d 838.

Where deceased, suffering from low blood pressure and myocarditis, returned to work and due to a speeding up of work at the plant, causing him to stoop and exert himself more than normal, he collapsed and died, it was held that he died from an accident arising out of and in the course of employment. Sweatt v. Marlboro Cotton Mills (S.C. 1945) 206 S.C. 476, 34 S.E.2d 762.

Award of compensation was based on conjecture, surmise and speculation. Cagle v. Judson Mills (S.C. 1940) 195 S.C. 346, 11 S.E.2d 376.

In a case where an award was sought for a death caused by cancer, the court held that if facts show a causal connection between the injury and the development of cancer, then the two cannot be separated, and the victim of the cancer, or his dependents, is entitled to compensation. Jeffers v. Manetta Mills (S.C. 1939) 190 S.C. 435, 3 S.E.2d 489.

18. —— Medical evidence, arising out of employment

When testimony of medical experts is relied upon to establish causal connection between accident and subsequent disability or death, opinion of experts must be at least that disability or death most probably resulted from the accidental injury. Grice v Dickerson, Inc. (1962) 241 SC 225, 127 SE2d 722. Kennedy v Williamsburg County (1963) 242 SC 477, 131 SE2d 512. Lorick v South Carolina Electric & Gas Co. (1965) 245 SC 513, 141 SE2d 662.

Where medical expert opined that it was possible that claimant’s quiescent osteoarthritic condition was aggravated by injury incurred in fall, but was unwilling to state that it was probable, evidence was insufficient to establish causal connection between the accident and subsequent disability. Cross v Concrete Materials (1960) 236 SC 440, 114 SE2d 828. Dennis v Williams Furniture Corp. (1963) 243 SC 53, 132 SE2d 1.

In order that medical testimony may have some probative value in establishing a causal relationship between an injury and employment conditions, it is not enough for the doctors to say simply that the ailment in question might have resulted from the assigned cause, or that the one could have brought about the other; they must go further and testify at least that, taking into consideration all the attending data, it is their professional opinion the result in question most probably came from the cause alleged. Brady v Sacony of St. Matthews (1957) 232 SC 84, 101 SE2d 50. Glover v Columbia Hospital of Richland County (1960) 236 SC 410, 114 SE2d 565.

Causal connection between workplace injury to employee’s bicep and subsequent amputation of arm and shoulder as result of recurrence of pre‑existing cancer shortly after injury is not established in absence of any competent medical, lay or circumstantial evidence to support contention. Glover v. Rhett Jackson Co. of Bush River Road (S.C. 1980) 274 S.C. 644, 267 S.E.2d 77. Workers’ Compensation 1504

If claimant is unable to meet “most probable” test to establish causal connection between workplace injury and pre‑existing condition by presentation of medical testimony, causal connection may be established by presenting evidence of circumstances surrounding injury and subsequent events which give rise to reasonable inference that workplace injury aggravated pre‑existing condition. Glover v. Rhett Jackson Co. of Bush River Road (S.C. 1980) 274 S.C. 644, 267 S.E.2d 77.

Whether the absence of medical testimony is conclusive on the question of causation depends upon the particular facts and circumstances of the case. Arnold v. Benjamin Booth Co. (S.C. 1971) 257 S.C. 337, 185 S.E.2d 830.

No causal connection shown where medical evidence tended to negate even any possibility let alone probability that present disability causally connected with prior occurrence, despite testimony of claimant. Dennis v. Williams Furniture Corp. (S.C. 1963) 243 S.C. 53, 132 S.E.2d 1.

19. In the course of employment

The words “in the course of employment” have reference to the time, place and circumstances under which the accident occurs. Eargle v South Carolina Electric & Gas Co. (1944) 205 SC 423, 32 SE2d 240. Willard v Commissioners of Public Works (1951) 219 SC 477, 65 SE2d 874. Douglas v Spartan Mills (1965) 245 SC 265, 140 SE2d 173. Williams v South Carolina State Hospital (1965) 245 SC 377, 140 SE2d 601. Bickley v South Carolina Electric & Gas Co. (1972) 259 SC 463, 192 SE2d 866.

An injury occurs “in the course of” employment for workers’ compensation purposes when it happens within the period of employment, at a place where the employee reasonably may be in the performance of the employee’s duties, and while fulfilling those duties or engaging in something incidental to those duties. Ardis v. Combined Ins. Co. (S.C.App. 2008) 380 S.C. 313, 669 S.E.2d 628, rehearing denied; Houston v. Deloach & Deloach (S.C.App. 2008) 378 S.C. 543, 663 S.E.2d 85; Hall v. Desert Aire, Inc. (S.C.App. 2007) 376 S.C. 338, 656 S.E.2d 753, rehearing denied; Gray v. Club Group, Ltd. (S.C.App. 2000) 339 S.C. 173, 528 S.E.2d 435, rehearing denied, certiorari denied; Broughton v. South of the Border (S.C.App. 1999) 336 S.C. 488, 520 S.E.2d 634, rehearing denied, certiorari denied; Douglas v. Spartan Mills, Startex Division (S.C. 1965) 245 S.C. 265, 140 S.E.2d 173.

Death arises “in the course of employment” for workers’ compensation purposes, when it occurs within period of employment at place where employee reasonably may be in performance of his duties and while fulfilling those duties or engaged in something incidental thereto. Hicks v. Piedmont Cold Storage, Inc. (S.C.App. 1996) 324 S.C. 628, 479 S.E.2d 831, rehearing denied, certiorari granted, reversed 335 S.C. 46, 515 S.E.2d 532; Beam v. State Workmen’s Compensation Fund (S.C. 1973) 261 S.C. 327, 200 S.E.2d 83.

An injury arises “in the course of employment,” within the meaning of this section [Code 1962 Section 72‑14] when it occurs within the period of the employment, at a place where the employee reasonably may be in the performance of his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto. An accident arises “out of” the employment, when it arises because of it, as when the employment is a contributing proximate cause. These conditions must concur before the Act can apply. Johnson v Merchant’s Fertilizer Co. (1941) 198 SC 373, 17 SE2d 695. Fowler v Abbott Motor Co. (1960) 236 SC 226, 113 SE2d 737.

Traveling employees are generally within the course of their employment, for workers’ compensation purposes, from the time they leave home on a business trip until they return, for the self‑evident reason that traveling itself is a large part of the job. Collins v. Charlotte (S.C. 2015) 412 S.C. 283, 772 S.E.2d 510, rehearing denied. Workers’ Compensation 715

An act outside an employee’s regular duties which is undertaken in good faith to advance the employer’s interest, whether or not the employee’s own assigned work is thereby furthered, is within the course of employment for purposes of workers’ compensation. Hall v. Desert Aire, Inc. (S.C.App. 2007) 376 S.C. 338, 656 S.E.2d 753, rehearing denied. Workers’ Compensation 617

An employee need not be in the actual performance of the duties for which he was expressly employed in order for his injury to be in “the course of” employment for workers’ compensation purposes; rather, it is sufficient if the employee is engaged in a pursuit or undertaking consistent with his contract of hire and which in some logical manner pertains to or is incidental to his employment. Hall v. Desert Aire, Inc. (S.C.App. 2007) 376 S.C. 338, 656 S.E.2d 753, rehearing denied. Workers’ Compensation 617

When an employee is in the performance of the duties of the employer, the fact that the injury was sustained while performing the duty in an unauthorized manner or in violation of instruction or rules of the employer does not make the injury one incurred outside the scope of employment. McGriff v. Worsley Companies, Inc. (S.C.App. 2007) 376 S.C. 103, 654 S.E.2d 856, rehearing denied, certiorari denied. Workers’ Compensation 617

Generally, an employee need not be in the actual performance of the duties for which he was expressly employed in order for his injury to be in the course of employment. McGriff v. Worsley Companies, Inc. (S.C.App. 2007) 376 S.C. 103, 654 S.E.2d 856, rehearing denied, certiorari denied. Workers’ Compensation 617

In workers’ compensation action, an injury occurs within the course of employment when it occurs within the period of employment, at a place where the employee reasonably may be in the performance of his duties, and while fulfilling those duties or engaged in something incidental thereto. Eaddy v. Smurfit‑Stone Container Corp. (S.C.App. 2003) 355 S.C. 154, 584 S.E.2d 390, rehearing denied. Workers’ Compensation 617

Injuries from spider bite arose out of firefighter’s employment, and thus firefighter was entitled to workers’ compensation benefits after complications from the bite led to the amputation of firefighter’s leg; spider was in the firefighter’s boot when firefighter put the boot on to respond to a call, it was the nature of his job to wear fireman’s boots, and putting on his boots fulfilled a task incidental to firefighter’s employment. Simmons v. City of Charleston (S.C.App. 2002) 349 S.C. 64, 562 S.E.2d 476, rehearing denied, certiorari dismissed. Workers’ Compensation 623

An injury occurs “in the course of” employment if it happens within the period of employment at a place where the employee reasonably may be in the performance of his duties and while fulfilling those duties. Jennings v. Chambers Development Co. (S.C.App. 1999) 335 S.C. 249, 516 S.E.2d 453, rehearing denied, certiorari denied. Workers’ Compensation 616

Phrase “in the course of” in workers’ compensation statute requiring that injury by accident must be one arising out of and in course of employment to be compensable refers to injury’s time, place and circumstances. Hicks v. Piedmont Cold Storage, Inc. (S.C.App. 1996) 324 S.C. 628, 479 S.E.2d 831, rehearing denied, certiorari granted, reversed 335 S.C. 46, 515 S.E.2d 532. Workers’ Compensation 617

Workers’ compensation claimant need not be in actual performance of duties for which he was employed in order for his injury or his death to be “in the course of employment” and, thus, compensable. Hicks v. Piedmont Cold Storage, Inc. (S.C.App. 1996) 324 S.C. 628, 479 S.E.2d 831, rehearing denied, certiorari granted, reversed 335 S.C. 46, 515 S.E.2d 532. Workers’ Compensation 617

If workers’ compensation claimant is doing work at direction and for benefit of employer, time and place of work are for benefit of employer and part of employment, for purposes of determining whether claimant’s injury or death occurred in course of employment and is, thus, compensable. Hicks v. Piedmont Cold Storage, Inc. (S.C.App. 1996) 324 S.C. 628, 479 S.E.2d 831, rehearing denied, certiorari granted, reversed 335 S.C. 46, 515 S.E.2d 532. Workers’ Compensation 712

Term “in course of” in Workers’ Compensation Act refers to time, place, and circumstances under which accident occurred. Osteen v. Greenville County School Dist. (S.C.App. 1996) 323 S.C. 432, 475 S.E.2d 775, rehearing denied, certiorari granted, reversed 333 S.C. 43, 508 S.E.2d 21. Workers’ Compensation 615

The “course of employment” includes not only the actual doing of the work, but also a reasonable margin of time and space to use in passing to and from the place where the work is done. The act of leaving the employer’s premises is in the course of one’s employment if the employee leaves the premises as contemplated at the close of the work day. Camp v. Spartan Mills (S.C.App. 1990) 302 S.C. 348, 396 S.E.2d 121. Workers’ Compensation 615

The mere fact of death during employment is not a basis for an award. Lorick v. South Carolina Elec. & Gas Co. (S.C. 1965) 245 S.C. 513, 141 S.E.2d 662.

Employment includes not only the actual doing of the work, but a reasonable margin of time and space necessary to be used in passing to and from the place where the work is to be done. Williams v. South Carolina State Hospital (S.C. 1965) 245 S.C. 377, 140 S.E.2d 601.

Employment may begin in point of time before the work is entered upon and in point of space before the place where the work is to be done is reached. Williams v. South Carolina State Hospital (S.C. 1965) 245 S.C. 377, 140 S.E.2d 601.

20. Incidental to employment

Where truck driver was injured while standing on pier waiting to have his truck loaded at manufacturer’s plant, driver was acting within course of his employment so as to bring him within provisions of Workers Compensation Law since the act of “waiting” was consistent with driver’s contract for hire and was incidental to his employment as truckdriver. Carrier v. Westvaco Corp., 1992, 806 F.Supp. 1242, affirmed 46 F.3d 1122. Workers’ Compensation 656

A finding that a fireman’s injuries were incidental to his employment was supported by substantial evidence and would be affirmed where the employee was performing the work‑related task of washing dishes when a co‑worker surprised him by grabbing him from behind and wrestling him to the floor. Floyd v. City of Charleston (S.C.App. 1986) 287 S.C. 474, 339 S.E.2d 166. Workers’ Compensation 672

Where employee was expected at premises of employer before seven o’clock when his hourly wage would begin and went there some time before five o’clock and was burned to death in his parked car, it could not be reasonably said that he was engaged in anything incidental to his employment at the time of the accident. Crawley v. T. G. Griggs Trucking Co. (S.C. 1954) 225 S.C. 154, 81 S.E.2d 41.

The protection of the Workmen’s Compensation Law attends a covered employee not only during his hours of labor but before and after, when his activities are incident to his employment. Mack v. Branch No. 12, Post Exchange, Fort Jackson (S.C. 1945) 207 S.C. 258, 35 S.E.2d 838. Workers’ Compensation 706

21. Lunch hour

Where an employee was killed while walking along a public street approximately 300 feet from the entrance to the plant of his employer, during his lunch hour, while on his own time, and while performing no duty for his employer, his death was not the result of an accident arising out of and in the course of his employment. Troutman v. Williams Furniture Corp. (S.C. 1953) 224 S.C. 353, 79 S.E.2d 374.

Where claimant was struck while walking on public street as he was returning from lunch hour, his death was not covered by an accident arising out of and in the course of his employment and was not compensable. Troutman v. Williams Furniture Corp. (S.C. 1953) 224 S.C. 353, 79 S.E.2d 374.

22. Vacation

The general rule is that an employee while on vacation is not within the protection of the Workmen’s Compensation Law. LaMott v. City of West Columbia (S.C. 1972) 259 S.C. 594, 193 S.E.2d 592. Workers’ Compensation 765

Where a laborer and handy man at a municipal water plant during his vacation returned to the plant in order to obtain permission of his employer to leave the city, and joined other employees in gathering nuts on the premises, as they were permitted to do, and fell from a tree, sustaining injuries, the injury did not arise out of and in the course of his employment. Williams v. City of Columbia (S.C. 1950) 218 S.C. 287, 62 S.E.2d 469.

Ordinarily an employee while on vacation is not within the protection of the Act. Williams v. City of Columbia (S.C. 1950) 218 S.C. 287, 62 S.E.2d 469. Workers’ Compensation 704

23. Business trips

When a trip serves both business and personal purposes, it is a “business trip” for workers’ compensation purposes if the trip would have been made in spite of the failure or absence of the private purpose, because the service to be performed for the employer would have caused the journey to be made by someone even if it had not coincided with the employee’s personal journey. Ardis v. Combined Ins. Co. (S.C.App. 2008) 380 S.C. 313, 669 S.E.2d 628, rehearing denied. Workers’ Compensation 715

Deceased worker’s compensation claimant’s trip to another city to attend an employer‑sponsored sales meeting constituted a “business trip” rather than a personal trip, even though claimant engaged in some personal activities during trip, and therefore, fatal injury suffered by claimant during overnight fire at hotel where he stayed following conclusion of sales meeting occurred within the course of his employment and was compensable; claimant traveled to meeting solely for benefit of employer, claimant did not substantially deviate from business purpose at time of his death, and, in the absence of business purpose, claimant would not have made trip at all. Ardis v. Combined Ins. Co. (S.C.App. 2008) 380 S.C. 313, 669 S.E.2d 628, rehearing denied. Workers’ Compensation 715

Fact that workers’ compensation claimant, who died from smoke inhalation resulting from overnight fire in hotel where he was staying following work‑related seminar, was sleeping rather than engaged in business duties at time of fatal injury did not preclude finding that injury arose out of his employment, even though seminar ended earlier that day; it was reasonably foreseeable that claimant, who drove five hours to seminar from his home, would spend the night before driving back, in order to be rested and drive during daylight. Ardis v. Combined Ins. Co. (S.C.App. 2008) 380 S.C. 313, 669 S.E.2d 628, rehearing denied. Workers’ Compensation 715

Deceased workers’ compensation claimant’s fatal smoke inhalation injury, which was the result of a fire in the middle of the night at hotel where he stayed following a sales meeting at same location, “arose out of” his employment as a sales representative; but for employer‑sponsored sales meeting at hotel, which claimant was expected to attend, claimant would not have stayed at hotel where he died. Ardis v. Combined Ins. Co. (S.C.App. 2008) 380 S.C. 313, 669 S.E.2d 628, rehearing denied. Workers’ Compensation 715

Deceased workers’ compensation claimant’s act of sleeping overnight at hotel, following the conclusion of an employer‑sponsored sales meeting at the same hotel, was “incidental” to claimant’s employment, and therefore, fatal injury claimant suffered as result of fire and smoke inhalation during his overnight stay was compensable; although a personal activity, claimant’s act of sleeping at hotel prior to traveling home the following day was necessary to claimant’s life, comfort and convenience, and employer recognized the reasonableness of claimant’s decision to stay overnight by reserving and paying for claimant’s room. Ardis v. Combined Ins. Co. (S.C.App. 2008) 380 S.C. 313, 669 S.E.2d 628, rehearing denied. Workers’ Compensation 715

Even if deceased workers’ compensation claimant’s participation in a series of acts, including going to dinner, shopping, and bowling, constituted a substantial deviation from his business trip to another city to attend an employer‑sponsored sales meeting, any such deviation was cured by the time claimant was fatally injured by fire and smoke inhalation during his overnight stay at hotel where the meeting was held, and therefore, claimant was not outside the scope of his employment at the time of his death. Ardis v. Combined Ins. Co. (S.C.App. 2008) 380 S.C. 313, 669 S.E.2d 628, rehearing denied. Workers’ Compensation 718

An identifiable deviation from a business trip for personal reasons takes the employee out of the course of employment for workers’ compensation purposes until the employee returns to the route of the business trip, unless the deviation is so small as to be disregarded as insubstantial. Ardis v. Combined Ins. Co. (S.C.App. 2008) 380 S.C. 313, 669 S.E.2d 628, rehearing denied. Workers’ Compensation 718

Substantial evidence supported finding that injuries sustained by workers’ compensation claimant as a result of automobile accident during business trip occurred in the course of his employment; claimant’s exclusive purpose for the trip was to represent and advance employer’s interest, and claimant was engaged in ongoing discussions regarding planning for sales activities on behalf of employer at the time of the accident. Hall v. Desert Aire, Inc. (S.C.App. 2007) 376 S.C. 338, 656 S.E.2d 753, rehearing denied. Workers’ Compensation 715

Substantial evidence supported finding that injuries sustained by workers’ compensation claimant as a result of automobile accident during business trip arose out of his employment; claimant was engaged in ongoing discussion with business associates involving the marketing and sale of employer’s equipment at the time of the accident, claimant would not have gone on trip but for such employment activities, and while claimant was consuming alcohol on night accident occurred, consuming alcohol at employer‑sponsored functions was part of the custom and practice of the business culture, and claimant’s job exposed him to the hazards incidental to that custom and practice. Hall v. Desert Aire, Inc. (S.C.App. 2007) 376 S.C. 338, 656 S.E.2d 753, rehearing denied. Workers’ Compensation 715

Claimant’s injury from collision with truck while removing debris from road outside entrance to property to be used for meeting with customers arose out of and in course of employment as vice president in charge of sales; claimant chose in good faith to remove the hazard to advance employer’s interest, and the accident would not have happened but for claimant’s business trip to the property to meet customers. Grant v. Grant Textiles (S.C. 2007) 372 S.C. 196, 641 S.E.2d 869, rehearing denied. Workers’ Compensation 718

Finding that automobile accident in which courier was killed arose out of his employment was supported by substantial evidence, where courier was employed by company to make deliveries from golf club to hotel managed by company and then back, and accident occurred while courier was en route to golf club. Gray v. Club Group, Ltd. (S.C.App. 2000) 339 S.C. 173, 528 S.E.2d 435, rehearing denied, certiorari denied. Workers’ Compensation 714

An injury incurred during a trip which serves both a business and a personal purpose is within the scope of employment if the trip involves the performance of a service for the employer which would have caused the trip to be taken by someone even if it had not coincided with the personal journey. Gibson v. Spartanburg School Dist. No. 3 (S.C.App. 2000) 338 S.C. 510, 526 S.E.2d 725, rehearing denied, certiorari denied. Workers’ Compensation 661

The evidence supported the determination of the Workers’ Compensation Commission that a worker was not in the course of his employment when he drowned in the swimming pool of a motel where he was staying while working on an out‑of‑town job, and to which he had returned when workers were sent home from the work site because of rain, where the record contained conflicting testimony as to the possibility that workers would have returned to work that day, and whether they were instructed to remain at the motel. Miller by Miller v. State Roofing Co. (S.C. 1994) 312 S.C. 452, 441 S.E.2d 323. Workers’ Compensation 1568

The death of an employee in an automobile accident on his way home from work arose out of and during the course of a trip made on behalf of his employer, and thus his widow was entitled to receive death benefits under workers’ compensation, where he was carrying documents from an auxiliary office for delivery to the main office the next day, a job which the employer would have had to arrange by some other method if the employee had not taken them. Stough v. Westinghouse Savannah River Co. (S.C.App. 1993) 311 S.C. 129, 427 S.E.2d 716, rehearing denied, certiorari denied. Workers’ Compensation 723

Substantial evidence supported the Industrial Commission’s findings that an employee was not acting within the scope and in the course of his employment at the time of his death where he was killed in an automobile accident while attending a training seminar for his employer, but the accident occurred some distance from the seminar motel, several hours after the last scheduled seminar event had ended, and while the employee was in a car with other employees for the purpose of attending a movie. Brownlee v. Wetterau Food Services (S.C.App. 1986) 288 S.C. 82, 339 S.E.2d 694.

Trip to restaurant was not such deviation as to remove appellant’s testate or respondent from course and scope of employment so as to deprive respondent of co‑employee immunity under workmen’s compensation statute where fatal accident occurred while respondent was driving company car and both respondent and testate were returning to motel after out of town company meeting. Merritt v. Smith (S.C. 1977) 269 S.C. 301, 237 S.E.2d 366.

Trip to and from eating establishment, as well as taking meals themselves, while on out of town business trip are within course and scope of employment unless circumstances attending taking of meal constitutes deviation. Merritt v. Smith (S.C. 1977) 269 S.C. 301, 237 S.E.2d 366. Workers’ Compensation 714

When an employee is on a special errand or mission for his employer and receives injury, or, death results from an accident, such arises out of and in the course of his employment within the meaning of the Compensation Act. Bickley v. South Carolina Elec. & Gas Co. (S.C. 1972) 259 S.C. 463, 192 S.E.2d 866. Workers’ Compensation 609; Workers’ Compensation 616

Where an employee was killed when a train struck the car he was driving and his employment required him to perform his services at two different places, one being at a packing shed and the other at a labor camp, each was recognized as a part of the employment premises, and necessarily, in order to perform such services, the employee had to travel between the two places of employment, the regularity of the work at the two places and the necessary travel between such had the effect of bringing the place of injury within the scope of and course of his employment by the requirement in his contract of employment that he perform his duties at two different places. Sola v. Sunny Slope Farms (S.C. 1964) 244 S.C. 6, 135 S.E.2d 321.

Ordinarily, a workman is within the course of his employment while traveling from one job or working place to another during the working day, on the employer’s time, so as to be entitled to compensation for an injury received while so engaged. Sola v. Sunny Slope Farms (S.C. 1964) 244 S.C. 6, 135 S.E.2d 321. Workers’ Compensation 716

Injury during a trip which serves both a business and a personal purpose is within the course of employment if the trip involves the performance of a service for the employer which would have caused the trip to be taken by someone even if it had not coincided with the personal journey. Corley v. South Carolina Tax Commission (S.C. 1960) 237 S.C. 439, 117 S.E.2d 577. Workers’ Compensation 661

24. Trip for personal purposes

When a trip serves both business and personal purposes, it is a “personal trip” for workers’ compensation purposes if the trip would have been made in spite of the failure or absence of the business purpose and would have been dropped in the event of failure of the private purpose, though the business errand remained undone. Ardis v. Combined Ins. Co. (S.C.App. 2008) 380 S.C. 313, 669 S.E.2d 628, rehearing denied. Workers’ Compensation 715

Injury sustained by workers’ compensation claimant while attempting to make personal purchase during dual purpose trip to store occurred during a slight deviation from her assigned task of purchasing supplies for employer and, thus, was compensable, where claimant made trip to store at employer’s request, claimant attempted to make personal purchase immediately after purchasing the supplies requested by employer, item that claimant attempted to purchase was in same aisle as items that she purchased for employer, and claimant would have immediately returned to her place of employment with purchases made for employer had she not been severely injured. Gibson v. Spartanburg School Dist. No. 3 (S.C.App. 2000) 338 S.C. 510, 526 S.E.2d 725, rehearing denied, certiorari denied. Workers’ Compensation 666

Workers’ compensation claimant’s actions in leaving the employer’s premises and driving to co‑worker’s personal residence to check on her health were not done in order to assist co‑worker in the performance of her work and, thus, did not benefit the employer so as to bring claimant’s injury at co‑worker’s house within the course of her employment. Broughton v. South of the Border (S.C.App. 1999) 336 S.C. 488, 520 S.E.2d 634, rehearing denied, certiorari denied. Workers’ Compensation 713

Broken leg sustained by workers’ compensation claimant when she fell as she was checking on a sick co‑worker at co‑worker’s home did not arise out of claimant’s employment, where her employment as a clerk did not require her to check on sick employees and her injury was not related to the performance of any duties as an employee. Broughton v. South of the Border (S.C.App. 1999) 336 S.C. 488, 520 S.E.2d 634, rehearing denied, certiorari denied. Workers’ Compensation 649.3; Workers’ Compensation 713

A benefit proceeding would be remanded to the Workers’ Compensation Commission for an express finding regarding the character of the trip on which the claimant was injured where the claimant, having held property belonging to the employer over the weekend, was bringing it from her home into the workplace when the accident occurred; the Commission would have to determine whether the employee would have taken the trip to the workplace irrespective of having the employer’s property in her possession. DiMaria v. Multimedia, Inc. (S.C.App. 1992) 308 S.C. 387, 418 S.E.2d 324.

Claimant was held not to be covered by the Workmen’s Compensation Act when he was allowed to leave work in order to attend a hearing on a previous injury claim and was injured in an automobile accident, since he was on an errand for his own personal benefit and was driving his own automobile. Douglas v. Spartan Mills, Startex Division (S.C. 1965) 245 S.C. 265, 140 S.E.2d 173.

Where credit manager had turned over several delinquent accounts to store manager for collection and store manager left store apparently with intention to attempt collection of one of these accounts while enroute to see an acquaintance, though he was killed before reaching the home of the debtor but was within the limits of his directions, evidence was sufficient to infer that he was in the course of his employment when killed. Halpern v. De Jay Stores, Inc. (S.C. 1960) 236 S.C. 587, 115 S.E.2d 297.

Where a garage service manager was on call twenty‑four hours each day and his employer furnished him an automobile to use in answering service calls during regular or after regular hours but which he also used for personal affairs, evidence that after returning home from work he received a telephone call and left saying he would be back in a minute but he was injured in a collision with a tree on a road leading to his employer’s place of business did not reasonably warrant the inference that his injury arose out of and in the course of his employment. Fowler v. Abbott Motor Co. (S.C. 1960) 236 S.C. 226, 113 S.E.2d 737.

An award will be set aside where employee made substantial deviation from business route in order to accomplish a personal mission. White v. South Carolina State Highway Dept. (S.C. 1955) 226 S.C. 380, 85 S.E.2d 290.

Evidence showed that deceased employee had deviated completely from his master’s business. Falconer v. Beard‑Laney, Inc. (S.C. 1949) 215 S.C. 321, 54 S.E.2d 904.

25. Deviation from duties

An employee, in order to be entitled to compensation, need not necessarily be engaged in the actual performance of work at the time of injury; it is enough if he is upon his employer’s premises, occupying himself consistently with his contract of hire in some manner pertaining to or incidental to his employment. McCoy v Easley Cotton Mills (1950) 218 SC 350, 62 SE2d 772. Lee v Wentworth Mfg. Co. (1962) 240 SC 165, 125 SE2d 7.

Allowing non‑employee to drive employer’s dump truck was impermissible deviation from workers’ compensation claimant’s duties, and thus claimant’s injuries, which resulted from accident that occurred when non‑employee was driving truck, did not arise out of and in the course of his employment; claimant was assigned to haul asphalt from plant to road construction site, and non‑employee was not authorized to drive truck. Houston v. Deloach & Deloach (S.C.App. 2008) 378 S.C. 543, 663 S.E.2d 85. Workers’ Compensation 716

Workers’ compensation claimant’s actions in leaving the employer’s premises and driving to co‑worker’s personal residence to check on her health constituted a substantial deviation from the course of her employment, where her duties with the employer never required her to leave the premises and did not include checking on sick employees. Broughton v. South of the Border (S.C.App. 1999) 336 S.C. 488, 520 S.E.2d 634, rehearing denied, certiorari denied. Workers’ Compensation 713

An employee, to be entitled to compensation, need not be in the actual performance of the duties for which he was expressly employed in order for his injury or death to be in the “course of employment” and thus compensable. Beam v. State Workmen’s Compensation Fund (S.C. 1973) 261 S.C. 327, 200 S.E.2d 83. Workers’ Compensation 617

It is sufficient if the employee is engaged in a pursuit or undertaking consistent with his contract of hire and which in some logical manner pertains to or is incidental to his employment. Beam v. State Workmen’s Compensation Fund (S.C. 1973) 261 S.C. 327, 200 S.E.2d 83. Workers’ Compensation 617

Employment connection may be supplied by varying degrees of employer encouragement or direction. Beam v. State Workmen’s Compensation Fund (S.C. 1973) 261 S.C. 327, 200 S.E.2d 83.

The clearest case of coverage is that of a teacher who is directed to attend a teacher’s institute. It is sufficient if attendance, although not compulsory, is definitely urged or expected but not if it is merely encouraged. Beam v. State Workmen’s Compensation Fund (S.C. 1973) 261 S.C. 327, 200 S.E.2d 83.

When a city police officer, although outside his jurisdiction, came to the aid of a deputy sheriff in subduing a prisoner, he was engaged in the performance of the duties of his employment. Walker v. City of Columbia (S.C. 1966) 247 S.C. 241, 146 S.E.2d 856.

An insubstantial and trivial deviation from the course of employment is compensable. Cauley v. Ross Builders Supplies, Inc. (S.C. 1961) 238 S.C. 38, 118 S.E.2d 879.

Evidence showing that carpenter was engaged in making a wedge for a fellow employee’s mantel clock, and that such task would have taken about five minutes, was held to sustain a finding that this deviation was insubstantial, so that injury received in making wedge was compensable. Cauley v. Ross Builders Supplies, Inc. (S.C. 1961) 238 S.C. 38, 118 S.E.2d 879.

Where police janitor was injured while taking message to wife of person imprisoned in city jail, in order that bail might be arranged, and janitors had for many years been under general orders to act as messengers for that purpose where telephone communication was not available it was within the power of the city, acting through its police department, so to direct and authorize the janitors, and the injury was compensable as arising out of and in the course of the claimant’s employment. Lomax v. City of Greenville (S.C. 1954) 225 S.C. 289, 82 S.E.2d 191. Workers’ Compensation 718

An accident cannot be said not to “arise out of” the employment merely because the injured employee at the time was not engaged in doing what was specially prescribed to him; if in the course of his employment an emergency arises and, without deserting his employment, he does what he thinks necessary for the purpose of advancing the work in which he is engaged in the interest of his employer, and in so doing he suffers injury, the accident may properly be regarded as arising out of the employment. Hiers v. Brunson Const. Co. (S.C. 1952) 221 S.C. 212, 70 S.E.2d 211. Workers’ Compensation 627

Where a hog foreman and general utility man employed by the South Carolina Industrial School for Boys was injured while engaged in painting the entrance hall and apartment occupied by him and his family, said apartment being furnished rent‑free by his employer, the injury arose out of and in the course of his employment. Jolly v. South Carolina Indus. School for Boys (S.C. 1951) 219 S.C. 155, 64 S.E.2d 252. Workers’ Compensation 1597

Where one, while awaiting a work assignment during working hours at his place of employment, in idle curiosity tampers with a strange object which is present by reason of the nature of the employer’s business, and is injured, the injury may be compensable. Jordan v Dixie Chevrolet, Inc. (1950) 218 SC 73, 61 SE2d 654, holding compensable an injury to a garage employee who, during an idle period, found a tear gas bomb in the glove compartment of a car being repaired by another employee, and, not knowing what the object was, pulled the cotter pin and threw the bomb to the floor, causing it to explode. Jordan v. Dixie Chevrolet (S.C. 1950) 218 S.C. 73, 61 S.E.2d 654.

Not every violation of an order given to a workman will necessarily remove him from the protection of the Workmen’s Compensation Act. Johnson v. Merchant’s Fertilizer Co. (S.C. 1941) 198 S.C. 373, 17 S.E.2d 695.

26. Unrelated work

Injury that claimant sustained while he performed repairs on his own truck during working hours and using his employer’s equipment “arose out of” his employment for workers’ compensation purposes; employer employed claimant and leased his services to business, the truck was being repaired for benefit of business with business’ consent, the truck would be utilized in business’ operations following repairs, and there was shortage of trucks, and claimant had volunteered the use of his truck once it was restored to operable condition. West v. Alliance Capital (S.C.App. 2006) 368 S.C. 246, 628 S.E.2d 279, rehearing denied, certiorari dismissed. Workers’ Compensation 662

Injury that claimant sustained while he performed repairs on his own truck during working hours and using his employer’s equipment “occurred in the course of” his employment for workers’ compensation purposes; employer paid claimant for repairing the vehicle at the worksite, and the activity occurred during working hours, using tools furnished by employer and for the purpose of remedying the employer’s vehicle shortage. West v. Alliance Capital (S.C.App. 2006) 368 S.C. 246, 628 S.E.2d 279, rehearing denied, certiorari dismissed. Workers’ Compensation 662

Fatal accident that occurred when an employee was repairing the personal vehicle of the plant manager on a Saturday was outside the course of his employment for workers’ compensation purposes; the work performed by the employee did not benefit the employer. Hicks v. Piedmont Cold Storage, Inc. (S.C. 1999) 335 S.C. 46, 515 S.E.2d 532, rehearing denied. Workers’ Compensation 635

Workers’ compensation claimant’s automobile accident, which occurred on public road on his way to work, did not occur “in the course of” his employment with school district, even if going and coming rule’s ban on receipt of benefits did not apply, where accident occurred before claimant arrived at school to begin day’s work, and he was not engaged in performance of any work‑related duties at time of accident. Aughtry v. Abbeville County School Dist. No. 60 (S.C.App. 1998) 332 S.C. 453, 504 S.E.2d 830, rehearing denied, reversed 340 S.C. 604, 533 S.E.2d 885. Workers’ Compensation 707; Workers’ Compensation 726

Worker’s death “arose out of and in the course of employment” and, therefore, his children were entitled to workers’ compensation benefits; worker was killed when supervisor’s car fell on him while worker was making repairs, supervisor personally offered to pay worker his regular hourly wage to perform repairs, repairs were performed on Saturday at place of work using employer’s tools, worker was handyman such that repairs were within scope of his duties, supervisor not only supervised worker, but also assisted him in repairs, employer profited from worker’s repairs in that employer had benefit of supervisor’s time during workweek, and if worker did not comply, he might have risked losing job. Hicks v. Piedmont Cold Storage, Inc. (S.C.App. 1996) 324 S.C. 628, 479 S.E.2d 831, rehearing denied, certiorari granted, reversed 335 S.C. 46, 515 S.E.2d 532. Workers’ Compensation 626; Workers’ Compensation 635

Where deceased was employed by the defendant at Florence, South Carolina, and was sent by the employer to Dayton, Ohio, for several months training in connection with his work, and while there, received fatal injuries in an automobile accident when he was returning from a picnic which he and other employees had on their own initiative arranged and attended near Dayton, the employee was not in the course of his employment throughout the entire time he was away on the employer‑sponsored training program and the injuries received while he was engaged in the personal outing at the picnic did not arise out of and in the course of his employment. Grice v. National Cash Register Co. (S.C. 1967) 250 S.C. 1, 156 S.E.2d 321.

Death of city employee who suffered a heart attack while attending a demonstration of a process for cleaning water pipes was not the result of an accident arising out of and in the course of his employment. Willard v. Commissioners of Public Works of City of Spartanburg (S.C. 1951) 219 S.C. 477, 65 S.E.2d 874.

Where town chief of police, while riding, contrary to explicit instructions of the mayor and the town council, on the side of a fire truck owned by the town, on its way to extinguish a fire, fell and received injuries from which he died, the accident did not arise out of and in the course of his employment. Black v. Town of Springfield (S.C. 1950) 217 S.C. 413, 60 S.E.2d 854. Workers’ Compensation 1602

Employee claimant was appointed deputy sheriff under Code 1962 Section 53‑71 but was not reappointed during subsequent terms of sheriff though he continued to act as clerk to the sheriff and jailer. While engaged in investigating a crime he was injured which was held to be out of and in the course of the employment. Pelfrey v. Oconee County (S.C. 1945) 207 S.C. 433, 36 S.E.2d 297.

Employee claimant was injured while working at the private residence of the superintendent of his employer from which employment the employer received no benefit whatsoever and had no interest, therefore, it was not an injury arising out of and in the course of the employment. Fountain v. Hartsville Oil Mill (S.C. 1945) 207 S.C. 119, 32 S.E.2d 11.

The clause “arising out of and in the course of the employment” cannot reasonably be construed to cover an injury sustained by a textile mill worker while returning from a baseball game where the mill had no direct connection with the team, the mill worker being a player. Pate v. Plymouth Mfg. Co. (S.C. 1941) 198 S.C. 159, 17 S.E.2d 146.

27. Area where injury sustained

The rule that injuries are covered if sustained by an employee while going to or from his place of work upon premises owned or controlled by the employer apply to the actual area where an employee was working and where he would presumably encounter hazards of his employment in entering or leaving, and not to an area of more than 200,000 acres, over which the control exercised by the employer was merely for security purposes, except as to the limited areas in which work was being carried on. E. I. Du Pont De Nemours Co. v. Hall (C.A.4 (S.C.) 1956) 237 F.2d 145.

The test is not so much as to whether the employer owns or controls the place where the injury occurred, but rather, whether it happens on the premises where the work is to be performed. E. I. Du Pont De Nemours Co. v. Hall (C.A.4 (S.C.) 1956) 237 F.2d 145. Workers’ Compensation 711

Ankle fracture which migrant worker sustained when he fell on wet sidewalk at housing supplied by his employer arose out of and in the course of his employment for workers’ compensation purposes, where worker was essentially required to live on the employer’s premises by the nature of his employment, worker was making a reasonable use of the employer‑provided premises at the time of his accident, and injury was causally related to worker’s employment in that it was due to the conditions under which he lived. Pierre v. Seaside Farms, Inc. (S.C. 2010) 386 S.C. 534, 689 S.E.2d 615. Workers’ Compensation 709

Evidence supported finding that workers’ compensation claimant sustained a compensable injury when he was struck by car in road outside employer’s place of business; claimant was expected to be outside cleaning, claimant entered road to talk to acquaintance, claimant was expected to solicit new employees, and claimant and acquaintance discussed acquaintance’s application for employment with employer. McGriff v. Worsley Companies, Inc. (S.C.App. 2007) 376 S.C. 103, 654 S.E.2d 856, rehearing denied, certiorari denied. Workers’ Compensation 1578

An accidental injury is not rendered compensable under workers’ compensation law by the mere fact that it occurred on the employer’s premises; to so hold would be to abandon the requirement that an accident bear some logical causal relation to the employment. Aughtry v. Abbeville County School Dist. No. 60 (S.C.App. 1998) 332 S.C. 453, 504 S.E.2d 830, rehearing denied, reversed 340 S.C. 604, 533 S.E.2d 885. Workers’ Compensation 710

Requirement that injury occur “in the course of” employment was not satisfied by fact that claimant’s automobile ultimately landed on school’s football practice field, in claimant’s action for workers’ compensation benefits from school district for injuries he sustained in automobile accident that occurred on public road on his way to work, where football field was not a way upon which claimant was passing to and from work. Aughtry v. Abbeville County School Dist. No. 60 (S.C.App. 1998) 332 S.C. 453, 504 S.E.2d 830, rehearing denied, reversed 340 S.C. 604, 533 S.E.2d 885. Workers’ Compensation 726; Workers’ Compensation 729

If the workers’ compensation claimant be injured while passing, with the express or implied consent of the employer, to and from his work by a way over the employer’s premises, the injury is “in the course of” the employment as much as though it had happened while the employee was engaged in his work at the place of its performance. Aughtry v. Abbeville County School Dist. No. 60 (S.C.App. 1998) 332 S.C. 453, 504 S.E.2d 830, rehearing denied, reversed 340 S.C. 604, 533 S.E.2d 885. Workers’ Compensation 750

Lobby of building in which employer leased office space was, for purposes of workers’ compensation, premises of employer, and therefore claimant suffered compensable accident when she slipped on lobby floor while leaving work, though lobby was not owned, leased, controlled or maintained by employer. Evans v. Coats & Clark (S.C.App. 1997) 328 S.C. 467, 492 S.E.2d 807, rehearing denied. Workers’ Compensation 712

When claimant’s place of employment is a building, it is not necessary, for workers’ compensation purposes, that employer own or lease place where claimant’s injury occurred; rather, it is sufficient if employer has some kind or right of passage, as in case of elevators or lobbies. Evans v. Coats & Clark (S.C.App. 1997) 328 S.C. 467, 492 S.E.2d 807, rehearing denied. Workers’ Compensation 712

An employee was not entitled to Workers’ Compensation benefits for a fractured hip which disabled him from employment for several weeks, where the fracture occurred when the employee slipped and fell while demonstrating a karate‑kick to a co‑worker during a coffee break. Jones v. Hampton Pontiac (S.C. 1991) 304 S.C. 440, 405 S.E.2d 395.

Where books caused employee’s fall down stairs of apartment, and where employee, marriage and family counselor employed by family service of Charleston County, did not take books home for own convenience, but because special and unusual situation required her to take textbooks home for particular task requested by employer, accident and resulting injuries arose out of and in course of her employment. Moore v. Family Service of Charleston County (S.C. 1977) 269 S.C. 275, 237 S.E.2d 84.

Injury of supermarket employee arose out of and in the course of his employment where it was sustained when employee chased boys when he observed them snatch customer’s purse while he was outside supermarket retrieving shopping carts from parking lot. Howell v. Kash & Karry (S.C. 1975) 264 S.C. 298, 214 S.E.2d 821.

It is true that an accidental injury is not rendered compensable by the mere fact that it occurred on the employer’s premises; but the fact that the claimant was rightfully upon the premises controlled by the employer, as a result of her employment, and was leaving over the employer’s premises as contemplated at the close of the day’s work, made the act of leaving “in the course of” her employment. Williams v. South Carolina State Hospital (S.C. 1965) 245 S.C. 377, 140 S.E.2d 601.

If the employee be injured while passing, with the express or implied consent of the employer, to or from his work by a way over the employer’s premises, or over those of another in such proximity and relation as to be in practical effect a part of the employer’s premises, the injury is one arising out of and in the course of the employment as much as though it had happened while the employee was engaged in his work at the place of its performance. Williams v. South Carolina State Hospital (S.C. 1965) 245 S.C. 377, 140 S.E.2d 601.

The act of claimant in walking from the building where she worked to the employer‑maintained parking area was just as much a reasonable incident to her leaving the place of her work as walking from the ward where she worked along a hallway to the door of the building. Williams v. South Carolina State Hospital (S.C. 1965) 245 S.C. 377, 140 S.E.2d 601.

An accidental injury may be compensable if received at some distance from employer’s place of business, where, at the time and place of injury, employee was doing some work in connection with, or incidental to his employment. Fowler v. Abbott Motor Co. (S.C. 1960) 236 S.C. 226, 113 S.E.2d 737.

Where mortar mixer on school construction job drove his own truck to the job site, parked on the school grounds, pulled up the hand brake, got out, and was walking behind the truck on his way to his work area, when the brake “gave way,” and the truck, rolling backward, struck him and broke his leg, there was no causal connection between the conditions under which his work was required to be performed and the injury for which he claimed compensation. Evans v. Jones‑Wilson, Inc. (S.C. 1959) 235 S.C. 219, 110 S.E.2d 851. Workers’ Compensation 730

Accidental injury is not rendered compensable by the mere fact that it occurred on the employer’s premises. The claimant must show also that the accident was connected with or incident to the performance of the duties of employment. Evans v. Jones‑Wilson, Inc. (S.C. 1959) 235 S.C. 219, 110 S.E.2d 851. Workers’ Compensation 609

Injury incurred while smoking on employer’s premises outside building where claimant was employed held compensable. McCoy v. Easley Cotton Mills (S.C. 1950) 218 S.C. 350, 62 S.E.2d 772.

Where an employee was injured on steps leading from a public thoroughfare to employer’s entrance it was held that the steps were not a part of the thoroughfare and therefore the employee was injured in the course of employment and entitled to compensation. Lamb v. Pacolet Mfg. Co. (S.C. 1947) 210 S.C. 490, 43 S.E.2d 353.

Where employee had arrived upon the employee’s premises to undertake his regular work, shortly before the usual hour of beginning, and accidental injury resulted from his effort to gratify his desire to smoke, such activity did not remove him from the protection of the Compensation Law. Mack v. Branch No. 12, Post Exchange, Fort Jackson (S.C. 1945) 207 S.C. 258, 35 S.E.2d 838. Workers’ Compensation 660

An employee merely by using a “mill village” street in going to or returning from his work is not at such time in the course of his employment, even though such street is the exclusive way of ingress and egress to the premises where he is employed and it is provided and maintained by the employer, unless there be some inherent danger in the use of such exclusive street or way. Gallman v. Springs Mills (S.C. 1942) 201 S.C. 257, 22 S.E.2d 715.

28. Acts of fellow employees

A co‑employee’s intentional sexual harassment of the employee was not an ordinary incident of employment, even though the conduct persisted through an extended period, since the employee could not have anticipated the conduct at the time of her employment; thus, the harassment was an “accident” for purposes of bringing the employee’s suit alleging emotional harm within the exclusive remedy provision of the Workers’ Compensation Act. Dickert v. Metropolitan Life Ins. Co. (S.C. 1993) 311 S.C. 218, 428 S.E.2d 700, modified on rehearing.

An action against a co‑employee alleging emotional harm as a result of sexual harassment would not be barred by the exclusivity provisions of the Workers’ Compensation Act, even though a co‑employee who negligently injures another employee while in the scope of his employment is immune under the act and cannot be held personally liable, since it is against public policy to extend immunity to the intentional tortious acts of co‑employees. Dickert v. Metropolitan Life Ins. Co. (S.C. 1993) 311 S.C. 218, 428 S.E.2d 700, modified on rehearing.

A cause of action for invasion of privacy, brought against an employer as a result of sexual harassment by a co‑employee, was barred by the exclusivity provisions of the Workers’ Compensation Act, even though certain invasion of privacy claims alleging a proprietary loss do fall outside the scope of the act, since the employee alleged emotion harm, and thus her claim was of a personal nature. Dickert v. Metropolitan Life Ins. Co. (S.C. 1993) 311 S.C. 218, 428 S.E.2d 700, modified on rehearing.

An employee’s altercation with his supervisor was an unusual and extraordinary condition of his employment resulting in a compensable accidental mental injury where the employee’s mental injury resulted directly from emotional stress brought on by the confrontation with the supervisor, the employee was a conscientious and dedicated worker, the altercation was totally unexpected by all parties and no similar incident had ever occurred, the employee had suffered no previous mental or nervous disorders, and, during the altercation, the supervisor questioned the employee’s word, accused the employee of poor maintenance performance, followed the employee to a tool shed and told him that he would not receive credit for previously earned vacation time if he quit, and threatened to call the police and have the employee removed from company property. Powell v. Vulcan Materials Co. (S.C. 1989) 299 S.C. 325, 384 S.E.2d 725.

Injuries arising out of a fight between workers precipitated by a dispute over work instructions arose out of employment. Kinsey v. Champion Am. Service Center (S.C. 1977) 268 S.C. 177, 232 S.E.2d 720.

Where employees were engaged in a fight, and the supervisor told the claimant that he ought to go home, but then told the claimant that if he was not going home to wait in front of the supervisor’s office, and while the claimant was waiting, the fight recommenced and the claimant was injured, the injury occurred “in the course of employment,” as the claimant was subject to the employer’s supervision and control at the time of the incident. Kinsey v. Champion Am. Service Center (S.C. 1977) 268 S.C. 177, 232 S.E.2d 720.

Claim for workmen’s compensation benefits was denied where claimant engaged in a fight after hours on the work premises, where the subject matter of the fight was not the work, but personal. Byrd v. Hanes Corp. (S.C. 1974) 262 S.C. 535, 205 S.E.2d 825.

Hospital attendant who died from anaphylactic shock caused by procaine penicillin administered to him by fellow employee at his request suffered a compensable injury by accident arising out of and in the course of employment. Portee v. South Carolina State Hospital (S.C. 1959) 234 S.C. 50, 106 S.E.2d 670.

The injury of an innocent employee in the course of his employment by the horseplay of a fellow employee in which the injured employee did not participate, arises out of the employment and nothing more appearing, is compensable. Allsep v. Daniel Const. Co. (S.C. 1950) 216 S.C. 268, 57 S.E.2d 427.

Evidence that the deceased was shot by a rejected suitor while working as hostess in a restaurant did not support claim that accident arose out of the employment. Bridges v. Elite, Inc. (S.C. 1948) 212 S.C. 514, 48 S.E.2d 497.

Employee asked another employee who was passing by place of employment for a cigarette whereupon the passerby hit employee’s outstretched arm and knocked him down breaking his leg. It was held that employee’s injuries did not arise out of his employment. Gory v. Monarch Mills (S.C. 1946) 208 S.C. 86, 37 S.E.2d 291.

Deceased employee had argument with fellow employee while at work. On the way home from work the same day the fellow employee shot him. An award to his widow was set aside because the fatal injury to deceased did not arise in the course of his employment. Dicks v. Brooklyn Cooperage Co. (S.C. 1946) 208 S.C. 139, 37 S.E.2d 286.

The biting off of an ear by one employee of another employee is an accident within the meaning of this section [Code 1962 Section 72‑14]. Lanford v. Clinton Cotton Mills (S.C. 1944) 204 S.C. 423, 30 S.E.2d 36.

Where the defendant’s manager struck a match and threw the same so near the plaintiff that the latter’s trousers caught fire, and that he did this wilfully and wantonly, and that in consequence the plaintiff was injured, the court held it stated a case which came within the contemplation of the Workmen’s Compensation Act; that is to say, it set forth an “injury by accident arising out of and in the course of the employment.” Cummings v. McCoy (S.C. 1940) 192 S.C. 469, 7 S.E.2d 222.

29. Assaults

Workers’ compensation claimant, who was injured at work when her estranged boyfriend assaulted her, was not entitled to recover benefits; claimant’s injuries originated from her personal relationship with boyfriend, and claimant had previously fought with boyfriend. Stone v. Traylor Brothers, Inc. (S.C.App. 2004) 360 S.C. 271, 600 S.E.2d 551, rehearing denied, certiorari denied. Workers’ Compensation 689.5(2)

Injuries sustained by claimant who was assaulted by coemployee in bar, where claimant had been repairing pool table which employer leased to bar, arose out of and incurred in course of his employment for workers’ compensation purposes; assault was result of coemployee’s anger toward claimant in failing to disengage security alarm at employer, and although immediately prior to assault claimant was playing pool, when coemployee confronted claimant about work‑related matter, claimant was compelled to resume his work duties for employer. Baggott v. Southern Music, Inc. (S.C. 1998) 330 S.C. 1, 496 S.E.2d 852, rehearing denied. Workers’ Compensation 680.5(3)

Where an employee is assaulted by a third person, the assault arises out of the employment if the risk of assault is increased because of the nature or setting of the work. Accordingly, where an employee who had been assaulted by a third person brought a tort action against her employer, and in her complaint and deposition enumerated a wide variety of acts and omissions by the employer which she contended increased the risk of assault on her because of the nature or setting of the work, there was no genuine issue of material fact to preclude the trial judge from granting the employer’s motion for summary judgment on the basis that the Workers’ Compensation Act was the employee’s remedy. Doe v. South Carolina State Hosp. (S.C.App. 1985) 285 S.C. 183, 328 S.E.2d 652.

An intentional assault on an employee by a third person is an “accident” because it is unexpected when viewed from the employee’s perspective. Doe v. South Carolina State Hosp. (S.C.App. 1985) 285 S.C. 183, 328 S.E.2d 652. Workers’ Compensation 689.5(1)

Where an employee was deliberately shot in a company parking lot while leaving work, by a nonemployee who mistook him for a fellow employee who drove a similar make and model of car, but the employee did not show that the nature or setting of the employment exacerbated the risk of criminal assault, his injuries did not “arise out of” his employment within the meaning of Section 42‑1‑160. Bright v. Orr‑Lyons Mills (S.C. 1985) 285 S.C. 58, 328 S.E.2d 68.

An assault on an employee by a fellow worker arose in the course of and out of her employment, so as to render her eligible for worker’s compensation benefits, where the assault took place on the employer’s premises at a place in which claimant was required to be in gaining access to her work and where the quarrel between the employees originated from the work. Skipper v. Southern Bell Tel. & Tel. Co. (S.C. 1978) 271 S.C. 152, 246 S.E.2d 94.

Evidence sufficiently supported finding that quarrel between supervisor and employee and subsequent assault by supervisor upon employee shortly after employee requested permission to leave work early arose in course of employment. Skipper v. Southern Bell Tel. & Tel. Co. (S.C. 1978) 271 S.C. 152, 246 S.E.2d 94. Workers’ Compensation 1563.2

When assaults arise out of employment. See Carter v. Penney Tire & Recapping Co. (S.C. 1973) 261 S.C. 341, 200 S.E.2d 64.

Where an employee was required to perform his duties under circumstances where he was endangered by a peril from a source outside of and unrelated to his actual work, which peril was known to the employer and against which the employer afforded no protection or relief, claimant’s injury by assault is compensable under this Act. Carter v. Penney Tire & Recapping Co. (S.C. 1973) 261 S.C. 341, 200 S.E.2d 64.

Deceased was killed during his lunch hour on the employer’s premises during an argument with fellow employee about two packs of cigarettes and three cents which did not arise out of the employment. The only suggestion that the employment had any bearing upon the injury was that the employment brought the two men together. The felonious assault, however, arose not out of the employment, but because the deceased, in effect, demanded a reimbursement of three cents in a purely personal transaction. The fact that the killing took place on the employer’s premises was a mere incident. Cyrus v. Miller Tire Service (S.C. 1946) 208 S.C. 545, 38 S.E.2d 761.

While a wilful assault may be said not to be an accident so far as the aggressor is concerned, to him who is not the aggressor, there exists the unexpected factor necessary to constitute an accident as contemplated by Workmen’s Compensation Laws. Lanford v. Clinton Cotton Mills (S.C. 1944) 204 S.C. 423, 30 S.E.2d 36. Workers’ Compensation 520

Although an employee be wilfully assaulted by another, whether fellow servant, foreman or outsider, the resulting injury will be deemed accidental and within the terms of this section [Code 1962 Section 72‑14] when it can be said that the assault approximately resulted from the prosecution of the employer’s business, in the terms of this section, arose out of an in the course of the employment. Thompson v. J.A. Jones Const. Co. (S.C. 1942) 199 S.C. 304, 19 S.E.2d 226.

An intentional and malicious assault and battery by an employer on an employee is not an accident within the provisions of the Workmen’s Compensation Act where no disability results; but the employee is not precluded from his common‑law remedy against the employer by any of the provisions of the Act. Stewart v. McLellan’s Stores Co. (S.C. 1940) 194 S.C. 50, 9 S.E.2d 35. Workers’ Compensation 520; Workers’ Compensation 2093

30. Going to or coming from work—In general

An injury sustained by an employee while on his way to or from work, and away from the premises of the employer, does not arise out of and in the course of the employment. Williams v South Carolina State Hospital (1965) 245 SC 377, 140 SE2d 601. Bickley v South Carolina Electric & Gas Co. (1972) 259 SC 463, 192 SE2d 866.

An employee going to or coming from the place where his work is to be performed is not engaged in performing any service growing out of and incidental to his employment, and, therefore, an injury suffered by accident at such time does not arise out of and in the course of his employment. E. I. Du Pont De Nemours Co. v. Hall (C.A.4 (S.C.) 1956) 237 F.2d 145. Workers’ Compensation 719

Under the “going and coming rule,” an employee going to or coming from the place where his work is to be performed is not engaged in performing any service growing out of and incidental to his employment; therefore, an injury sustained by accident at such time is not compensable under the Workers Compensation Act because it does not arise out of and in the course of his employment. Whitworth v. Window World, Inc. (S.C. 2008) 377 S.C. 637, 661 S.E.2d 333, rehearing denied. Workers’ Compensation 719

As a general rule, an employee going to or coming from the place where his work is to be performed is not engaged in performing any service growing out of and incidental to his employment and, therefore, an injury sustained by accident at such time does not arise out of and in the course of his employment, for purposes of the workers’ compensation statutes; however, where, in going to and returning from work, the employer provides the means of transportation, the employee is within the scope of his employment. Pratt v. Morris Roofing, Inc. (S.C. 2004) 357 S.C. 619, 594 S.E.2d 272. Workers’ Compensation 719; Workers’ Compensation 734

Under workers’ compensation law’s “going and coming rule,” an employee going to or coming from the place where his work is to be performed is not engaged in performing any service growing out of or incidental to his employment, and therefore, an injury suffered by accident at such time does not arise out of and in the course of his employment. Aughtry v. Abbeville County School Dist. No. 60 (S.C.App. 1998) 332 S.C. 453, 504 S.E.2d 830, rehearing denied, reversed 340 S.C. 604, 533 S.E.2d 885. Workers’ Compensation 719

An employee’s injury was not sustained in the course of her employment where the employee chose not to drive her own car home from work because it was snowbound, she chose to wait for someone else to take her home, and she was injured when she slipped and fell on the snow and ice while crossing the street between the employer’s 2 parking lots after her daughter had arrived to take her home 4 hours after her shift ended; reasonable minds could conclude that the 4‑hour delay exceeded a reasonable margin of time for leaving her work place, even with the inclement weather. Camp v. Spartan Mills (S.C.App. 1990) 302 S.C. 348, 396 S.E.2d 121.

An employee’s act of exiting her employer’s premises by way of her automobile was a reasonable incident to her leaving the place of her work and, therefore, an injury sustained by the employee in an automobile accident resulted from a risk reasonably incident to her employment and “arose out of” the employment. Holston v. Allied Corp. (S.C.App. 1989) 300 S.C. 174, 386 S.E.2d 793. Workers’ Compensation 750

Employee could not recover worker’s compensation for injuries sustained when struck by car while crossing street in crosswalk which connects employer’s parking area to main employee entrance to work area and where employee had been driven to work and had never entered employer’s parking lot. Howell v. Pacific Columbia Mills (S.C. 1987) 291 S.C. 469, 354 S.E.2d 384. Workers’ Compensation 750

The fact that the accident occurred shortly after the claimant had left her immediate place of work is not conclusive. Williams v. South Carolina State Hospital (S.C. 1965) 245 S.C. 377, 140 S.E.2d 601.

A reasonable length of time must be given an employee to separate himself or herself from the place of work. Williams v. South Carolina State Hospital (S.C. 1965) 245 S.C. 377, 140 S.E.2d 601.

As a general rule, an employee going to or coming from the place where his work is to be performed is not engaged in performing any service growing out of and incidental to his employment, and, therefore, an injury sustained by accident at such time does not arise out of and in the course of his employment. Sola v. Sunny Slope Farms (S.C. 1964) 244 S.C. 6, 135 S.E.2d 321. Workers’ Compensation 719

When business executives, professional men, “white‑collar” employees generally, and sometimes others, take work home for their convenience, the journey to and fro is not in the course of employment because the main purpose of it is to go home or to return to the place of employment, and the journey would be made irrespective of the homework. Sylvan v. Sylvan Bros. (S.C. 1954) 225 S.C. 429, 82 S.E.2d 794. Workers’ Compensation 719

The general rule is that one who is injured on a public highway while going to or returning from his work cannot claim that his injuries arose out of and in the course of employment. McDonald v. E. I. du Pont de Nemours & Co. (S.C. 1953) 223 S.C. 217, 74 S.E.2d 918. Workers’ Compensation 725

31. —— Exceptions to general rule, going to or coming from work

There are certain exceptions to the general rule, as follows: (1) Where, in going to and returning from work the means of transportation is provided by the employer, or the time that is consumed is paid for or included in the wages; (2) where the employee, on his way to or from his work, is still charged with some duty or task in connection with his employment; (3) the way used is inherently dangerous and is either (a) the exclusive way of ingress and egress to and from his work or (b) constructed and maintained by the employer; or (4) that such injury incurred by a workman in the course of his travel to his place of work and not on the premises of his employer but in close proximity thereto is not compensable unless the place of injury was brought within the scope of employment by an express or implied requirement in the contract of employment of its use by the servant in going to and coming from his work. Sola v Sunny Slope Farms (1964) 244 SC 6, 135 SE2d 321. Bickley v South Carolina Electric & Gas Co. (1972) 259 SC 463, 192 SE2d 866.

To the rule stated above there are certain exceptions, as follows: 1. Where in going to and returning from work, the means of transportation is provided by the employer, or the time thus consumed is paid for or included in the wages. 2. Where the employee, on his way to or from his work, is still charged with some duty or task in connection with his employment. 3. Where the way used is the sole and exclusive way of ingress and egress, or where the way of ingress and egress is constructed and maintained by the employer, and there is some inherent danger in the use of such exclusive street or way. Gallman v Springs Mills (1942) 201 SC 257, 22 SE2d 715. McDonald v E. I. Du Pont De Nemours & Co. (1953) 223 SC 217, 74 SE2d 818.

An employee returning from his work by means of transportation furnished him for that purpose by the employer is still engaged in the discharge of the duties of his employment. Ward v Ocean Forest Club, Inc. (1938) 188 SC 233, 198 SE 385. Bailey v Santee River Hardwood Co. (1944) 205 SC 433, 32 SE2d 365.

Unless the incidents of employment be exceptional, the relation between a master and his servant is suspended when the servant leaves the place of his actual employment at the close of his day’s work to go to his home. Dicks v Brooklyn Cooperage Co. (1946) 208 SC 139, 37 SE2d 286. McDonald v E. I. Du Pont De Nemours & Co. (1953) 223 SC 217, 74 SE2d 918.

Neither the duty/task nor special errand exceptions to going and coming rule applied to render city employee’s death in motorcycle accident within the course and scope of his employment for purposes of workers’ compensation compensability; although there was evidence that at time of accident employee was going to city recreational center to get a key requested by coworker whom he was to then meet at swim center, it was common for employee to work out of his office, the various recreational centers and the swim center, retrieving a key and signing forms were within employee’s typical job responsibilities, employee was not charged with any work‑related duties at the time of the accident, and employee did not perform a special errand by driving work to perform his typical job duties. Wofford v. City of Spartanburg ex rel. South Carolina Municipal Ins. Trust (S.C.App. 2015) 415 S.C. 152, 781 S.E.2d 146, rehearing denied, certiorari denied. Workers’ Compensation 723

Under the duty‑or‑task exception to the going‑and‑coming rule, a workers’ compensation claimant will not be precluded from receiving benefits where the claimant, on his way to or from his work, is charged with some duty or task in connection with his employment. Whitworth v. Window World, Inc. (S.C. 2008) 377 S.C. 637, 661 S.E.2d 333, rehearing denied. Workers’ Compensation 723

Employer provided the means of transportation to workers’ compensation claimant, for purposes of exception to going and coming rule, providing claimant was within the scope of his employment when employer provided means of transportation, where employer received payment of $35 per week from claimant for the transportation. Pratt v. Morris Roofing, Inc. (S.C. 2004) 357 S.C. 619, 594 S.E.2d 272. Workers’ Compensation 734

There are five exceptions to ban on receipt of workers’ compensation benefits for injuries that occur when employee is going to or coming from work: (1) where means of transportation is provided by employer, or time that is consumed is paid for or included in wages; (2) where employee is still charged with some duty or task in connection with his employment; (3) where way used is inherently dangerous and is either the exclusive way of ingress and egress to and from work or constructed and maintained by employer; (4) where place of injury was in close proximity to employer’s premises and was brought within scope of employment by express or implied requirement in contract of employment of its use by servant in going to and coming from his work; or (5) where employee sustains injury while performing special task, service, mission, or errand for his employer, even before or after customary working hours, or on day on which he does not ordinarily work. Aughtry v. Abbeville County School Dist. No. 60 (S.C.App. 1998) 332 S.C. 453, 504 S.E.2d 830, rehearing denied, reversed 340 S.C. 604, 533 S.E.2d 885. Workers’ Compensation 718; Workers’ Compensation 721; Workers’ Compensation 734; Workers’ Compensation 751; Workers’ Compensation 752

Inherently dangerous exception to rule barring receipt of workers compensation benefits for injury that occurs while going to or coming from work did not apply to claimant’s automobile accident, which occurred when claimant’s vehicle slipped on ice on public road on his way to work, in absence of evidence that road was the exclusive way of ingress and egress to and from work, or that road was constructed or maintained by his employer. Aughtry v. Abbeville County School Dist. No. 60 (S.C.App. 1998) 332 S.C. 453, 504 S.E.2d 830, rehearing denied, reversed 340 S.C. 604, 533 S.E.2d 885. Workers’ Compensation 726; Workers’ Compensation 751; Workers’ Compensation 752

“Special errand” doctrine which operates as exception to general rule allows compensation for injuries occurring during trip to and from work if trip is to accomplish mission for employer or if the trip itself constitutes a substantial part of service for which worker is employed. McDaniel v. Bus Terminal Restaurant Management Corp. (S.C. 1978) 271 S.C. 299, 247 S.E.2d 321.

The rule excluding off‑premises injuries during the journey to and from work does not apply if the making of that journey, whether or not separately compensated for, is in itself a substantial part of the service for which the worker is employed. Sola v. Sunny Slope Farms (S.C. 1964) 244 S.C. 6, 135 S.E.2d 321.

Ordinarily, the employment relationship is suspended from the time the employee leaves his work until he resumes his work unless the incidents of employment are exceptional. Sola v. Sunny Slope Farms (S.C. 1964) 244 S.C. 6, 135 S.E.2d 321. Workers’ Compensation 704

If a trip to and from work is made in a truck, bus, car or other vehicle under the control of the employer, an injury during that trip is incurred in the course of employment. Fowler v. Abbott Motor Co. (S.C. 1960) 236 S.C. 226, 113 S.E.2d 737.

But this exception cannot be applied where the employee fails to show that he was using the automobile of his employer at a place and a time where his duty as an employee required him to be. Fowler v. Abbott Motor Co. (S.C. 1960) 236 S.C. 226, 113 S.E.2d 737.

One of the exceptions to the exclusionary going to and from work rule is where the employer furnishes the transportation. Baldwin v. Pepsi‑Cola Bottling Co. (S.C. 1959) 234 S.C. 320, 108 S.E.2d 409. Workers’ Compensation 734

An injury incurred by a workman in the course of his travel to his place of work and not on the premises of his employer is not compensable unless the place of injury was brought within the scope of employment by an express or implied requirement in the contract of employment of its use by the servant in going to and coming from his work. Eargle v. South Carolina Elec. & Gas Co. (S.C. 1944) 205 S.C. 423, 32 S.E.2d 240. Workers’ Compensation 750

32. —— Applications of general rule, going to or coming from work

Substantial evidence that workers’ compensation claimant left the scope of his employment by violating specific order not to drive company vehicle home supported finding that claimant’s injuries, sustained in single‑vehicle collision while he was driving employer’s truck to work from his home, were not compensable. Pratt v. Morris Roofing, Inc. (S.C. 2004) 357 S.C. 619, 594 S.E.2d 272. Workers’ Compensation 1602

Workers’ compensation claimant’s effort to return the truck to his employer did not place him back inside the scope of his employment, so as to entitle him to workers’ compensation benefits, where at time of the single‑vehicle accident in which he was injured, claimant still was violating his employer’s instructions not to take the truck home. Pratt v. Morris Roofing, Inc. (S.C. 2004) 357 S.C. 619, 594 S.E.2d 272. Workers’ Compensation 795

Fact that courier was on his way from home to pick up items for delivery at time he was killed in motor vehicle accident did not preclude his widow from recovering workers’ compensation benefits under the going and coming rule, where courier was paid for both his travel time and his mileage, and his time and mileage began when he left his home in the morning. Gray v. Club Group, Ltd. (S.C.App. 2000) 339 S.C. 173, 528 S.E.2d 435, rehearing denied, certiorari denied. Workers’ Compensation 723

Injury sustained by workers’ compensation claimant while visiting co‑worker at co‑worker’s residence in order to check on her health was not sustained during a rescue or sudden emergency so as to bring injury within the course of her employment, where claimant’s duties as a clerk did not bring her into contact with sick employees staying at home, claimant did not have express or implied permission to leave employer’s premises in order to check on co‑worker, co‑worker was not so sick that she would not have been able to drive herself to the hospital, and any benefit to the employer deriving from good will co‑worker may have felt toward employer for sending someone to check on her was too minimal and tenuous a benefit to bring claimant’s actions within the court of her employment. Broughton v. South of the Border (S.C.App. 1999) 336 S.C. 488, 520 S.E.2d 634, rehearing denied, certiorari denied. Workers’ Compensation 627

Automobile accident that occurred on a public road while claimant was driving to work was not brought within the scope of employment by an implied requirement of employment that claimant use public road to get to work, even if accident occurred in close proximity to employer’s premises; to hold that employee’s leaving home in order to come to work was an implied requirement of employment would be an exception that would swallow rule prohibiting receipt of workers’ compensation benefits for injuries that occur while going to or coming from work. Aughtry v. Abbeville County School Dist. No. 60 (S.C.App. 1998) 332 S.C. 453, 504 S.E.2d 830, rehearing denied, reversed 340 S.C. 604, 533 S.E.2d 885. Workers’ Compensation 726; Workers’ Compensation 729

Injuries received by a self‑employed contractor while returning home from a job were compensable under the Workers’ Compensation Act where, at the time of the accident, the contractor was commuting in a truck used primarily for business, he was commuting to maximize his profits, and he was taking another employee home. Wright v. Wright (S.C.App. 1991) 306 S.C. 331, 411 S.E.2d 829, certiorari denied.

Employee could not recover worker’s compensation for injuries sustained when struck by car while crossing street in crosswalk which connects employer’s parking area to main employee entrance to work area and where employee had been driven to work and had never entered employer’s parking lot. Howell v. Pacific Columbia Mills (S.C. 1987) 291 S.C. 469, 354 S.E.2d 384. Workers’ Compensation 750

Injuries sustained by employee while returning home from attendance at meeting at workplace concerning work procedures and customer service did not arise out of and in course of employment where attendance at meeting was normal aspect of her job, she performed no service for employer during trip, and trip was not substantial service for which she was employed. McDaniel v. Bus Terminal Restaurant Management Corp. (S.C. 1978) 271 S.C. 299, 247 S.E.2d 321.

Special errand rule was inapplicable where high school assistant principal postponed normal weekend trip to home in another city to attend evening football game, for purpose of helping maintain order, and was injured in automobile accident during trip home after game. Gregg v. Dorchester County School System (S.C. 1978) 270 S.C. 189, 241 S.E.2d 554.

Where employee, while on his way to work, met the employer’s truck upon which the employee worked as a helper and the truck was stopped for him to board it, an injury incurred while crossing the street to board the truck was in the course of his employment and arose out of it. Baldwin v. Pepsi‑Cola Bottling Co. (S.C. 1959) 234 S.C. 320, 108 S.E.2d 409.

Where foreman of county chain gang was fatally injured while driving county truck back to the prison camp, the use of the county truck, with county fuel, was not sufficient to bring the case within the exceptions to the going and coming rule, since the fact remains that the deceased’s home was the camp itself and that at the time of the accident he was engaged in a purely personal enterprise and could not be considered as being in the process of going home to his work or from work to his home. Leonard v. Georgetown County (S.C. 1956) 230 S.C. 388, 95 S.E.2d 777.

Where an employee had closed his employer’s place of business for the day and was going home with the intention of posting his employer’s mail en route, and on his way entered the premises of a laundry where close friends of his were employed, and was killed in an explosion occurring on those premises, the accident which resulted in his death did not arise out of and in the course of his employment. Mims v. Nehi Bottling Co. (S.C. 1951) 218 S.C. 513, 63 S.E.2d 305.

Night watchman not compensable for injury received when on the way to work his automobile was hit when he made a left hand turn from the highway to enter employer’s premises. Hinton v. North Ga. Warehouse Corp. (S.C. 1947) 211 S.C. 370, 45 S.E.2d 591.

Employee’s death from automobile accident was out of and in course of employment. Ervin v. Myrtle Grove Plantation (S.C. 1945) 206 S.C. 41, 32 S.E.2d 877.

33. Sports injuries

Claimant’s injury while playing kickball during team‑building event claimant organized for employer arose out of employment and was compensable, even if team‑building events were not in claimant’s job description; claimant and his superior considered claimant’s presence vital to his job of executing the event, claimant was impliedly required to attend the game, his participation was expected, rather than voluntary, and it became part of his services. Whigham v. Jackson Dawson Communications (S.C. 2014) 410 S.C. 131, 763 S.E.2d 420, rehearing denied. Workers’ Compensation 664

Claimant’s injury received during a company softball game did not arise out of and in the course of his employment, even though the team uniforms were supplied by the employer and bore the company logo, the employer furnished the equipment, the employer paid the league dues, and the results of the games were published in the local newspaper, since all the games and practices were off the employer’s premises, some team meetings were held at lunch when the players were punched out of the clock, no softball activities were held during company time, the team was organized by employee initiative, and none of the players nor the coach received compensation for playing on the team. Leopard v. Blackman‑Uhler (S.C. 1995) 318 S.C. 369, 458 S.E.2d 41.

34. Back injury

Intermittent back pain suffered 15 years ago was not back “injury,” within meaning of Workers’ Compensation Act; back pain was not diagnosed as relating to any permanent injury, worker continued to work his same duties for additional 15 years, and he was never given any light duty restrictions. Rhame v. Charleston County School Dist. (S.C.App. 2015) 415 S.C. 162, 781 S.E.2d 151, rehearing denied, certiorari dismissed. Workers’ Compensation 568.3

Evidence supported finding that claimant’s subsequent back problems and eventual back surgeries were not directly and causally related to work accident, even though some of claimant’s treating physicians testified that the accident triggered her subsequent back problems; physician who treated claimant shortly after accident opined that she had significant back problems prior to the accident, and another physician opined that claimant had back problems prior to accident. Jones v. Georgia‑Pacific Corp. (S.C. 2003) 355 S.C. 413, 586 S.E.2d 111. Workers’ Compensation 1531.4

The evidence supported a finding by the Workers’ Compensation Commission that a claimant suffered a permanent 10 percent impairment to her back, despite the testimony of 2 neurosurgeons and one orthopaedic surgeon that she had no permanent partial impairment, where her family physician, who had treated her throughout her recuperation, testified that she had a permanent 10 percent impairment. Williams v. South Carolina Dept. of Mental Retardation (S.C.App. 1992) 308 S.C. 438, 418 S.E.2d 555.

Back injury is properly found to be work related where employee arrived for work possibly suffering some discomfort from undiagnosed source and, after performing work satisfactorily, employee bent over to retrieve something and felt pain in her back. Ellis v. Spartan Mills (S.C. 1981) 276 S.C. 216, 277 S.E.2d 590.

Evidence was sufficient to establish causal connection where it showed that employee, following back injury on the job, consulted physicians for lower back and leg pains ultimately resulting in diagnosis of problem as herniated disc. Aristizabal v. I. J. Woodside‑Division of Dan River, Inc. (S.C. 1977) 268 S.C. 366, 234 S.E.2d 21.

35. Heart attack—in general

The phrase “unusual or excessive strain” is not so limited in its meaning as to include only work of an entirely different character from that customarily done. Walsh v U. S. Rubber Co. (1961) 238 SC 411, 120 SE2d 685. McWhorter v South Carolina Dept. of Ins. (1969) 252 SC 90, 165 SE2d 365.

A coronary occlusion or thrombosis suffered by an employee constitutes a compensable “accident” if it is induced by unexpected strain or over‑exertion in the performance of the duties of his employment or by unusual and extraordinary conditions in the employment. Kearse v South Carolina Wildlife Resources Dept. (1960) 236 SC 540, 115 SE2d 183. Wynn v Peoples Natural Gas Co. (1961) 238 SC 1, 118 SE2d 812. Walsh v U. S. Rubber Co. (1961) 238 SC 411, 120 SE2d 685. Walker v Columbia (1966) 247 SC 241, 146 SE2d 856. McWhorter v South Carolina Dept. of Ins. (1969) 252 SC 90, 165 SE2d 365.

The right to compensation is not affected by the fact that the unusual or excessive strain which precipitates the heart attack occurs while employee is performing work of the same general type as that in which he is regularly involved. Kearse v South Carolina Wildlife Resources Dept. (1960) 236 SC 540, 115 SE2d 183. Walker v Columbia (1966) 247 SC 241, 146 SE2d 856. McWhorter v South Carolina Dept. of Ins. (1969) 252 SC 90, 165 SE2d 365.

The general rule has been adopted in this State that a coronary attack suffered by an employee constitutes a compensable accident within the meaning of the Workmen’s Compensation Act if it is induced by unexpected strain or overexertion in the performance of the duties of his employment, or by unusual and extraordinary conditions in the employment. Black v Barnwell County (1964) 243 SC 531, 134 SE2d 753. Rhodes v Guignard Brick Works (1965) 245 SC 304, 140 SE2d 487. Greer v Greenville County (1965) 245 SC 142, 141 SE2d 91. Lorick v South Carolina Electric & Gas Co. (1965) 245 SC 513, 141 SE2d 662.

The attack must have been induced by unusual strain or exertion at work. Colvin v E. I. Du Pont De Nemours Co. (1955) 227 SC 465, 88 SE2d 581. Sims v S. C. State Com. (1959) 235 SC 1, 109 SE2d 701.

If a heart attack results as a consequence of ordinary exertion required in the performance of the duties of the employment in the ordinary and usual manner, and without any outward untoward event, it is not compensable as an accident, and the fact that due to a weakened heart condition the exertion required for the ordinary performance of the work is too great for the particular employee who undertakes to perform it, does not make it a compensable accident. Kearse v South Carolina Wildlife Resources Dept. (1960) 236 SC 540, 115 SE2d 183. Walsh v U. S. Rubber Co. (1961) 238 SC 411, 120 SE2d 685. Black v Barnwell County (1964) 243 SC 531, 134 SE2d 753. Rhodes v Guignard Brick Works (1965) 245 SC 304, 140 SE2d 487. Greer v Greenville County (1965) 245 SC 442, 141 SE2d 91. Lorick v South Carolina Electric & Gas Co. (1965) 245 SC 513, 141 SE2d 662. Pellum v W. C. Chaplin Transport (1967) 249 SC 348, 154 SE2d 432.

A heart attack is compensable as a worker’s compensation accident if it is induced by unexpected strain or overexertion in the performance of the duties of a claimant’s employment or by unusual and extraordinary conditions of employment. Jordan v. Kelly Co., Inc. (S.C. 2009) 381 S.C. 483, 674 S.E.2d 166. Workers’ Compensation 571

The requisite showing for workers’ compensation compensability in heart attack cases consists of two distinct parts—medical and legal—each of which relates to causation, and in general, the legal component is established when the law defines what type of exertion or circumstance of employment satisfies the arising out of test, while the required medical showing resolves the question of whether the exertion or particular circumstance in fact caused the injury. South Carolina Second Injury Fund v. Liberty Mut. Ins. Co. (S.C.App. 2003) 353 S.C. 117, 576 S.E.2d 199. Workers’ Compensation 571

A heart attack suffered by an employee constitutes a compensable accident under the Workers’ Compensation Act if it is induced by unexpected strain or overexertion in the performance of his duties of employment, or by unusual and extraordinary conditions in employment; however, if a heart attack results as a consequence of ordinary exertion that is required in performance of employment duties in an ordinary and usual manner, and without any untoward event, it is not compensable as an accident. Shealy v. Aiken County (S.C. 2000) 341 S.C. 448, 535 S.E.2d 438, rehearing denied. Workers’ Compensation 571

If an employee dies of a heart attack, cerebral hemorrhage, apoplexy or other injury to the blood vessels, he or she must show not only that the injury was in the course of employment but also that the death arose out of employment, in that it was brought about by unexpected strain or over‑exertion, or as a result of unusual and extraordinary conditions of employment; however, if such an injury results as a consequence of the ordinary exertion that is required in the performance of employment duties in the ordinary and usual manner, and without any outward untoward event, it is not compensable as an accident. Jennings v. Chambers Development Co. (S.C.App. 1999) 335 S.C. 249, 516 S.E.2d 453, rehearing denied, certiorari denied. Workers’ Compensation 532; Workers’ Compensation 534; Workers’ Compensation 535

Under workers’ compensation law, an aneurysm in itself is not considered an accident but, rather, is a natural condition which only becomes a compensable accident if it was brought about by unexpected strain or over‑exertion in the performance of the duties of employment or by unusual and extraordinary conditions in the employment. Jennings v. Chambers Development Co. (S.C.App. 1999) 335 S.C. 249, 516 S.E.2d 453, rehearing denied, certiorari denied. Workers’ Compensation 532

A heart attack suffered by an employee constitutes a compensable “accident” if it is induced by unexpected strain or overexertion in the performance of the duties of the employee’s employment or by unusual and extraordinary conditions in the employment. If a heart attack results as a consequence of ordinary exertion required in the performance of the duties of the employment in the ordinary and usual manner, and without any outward untoward event, it is not compensable as an accident; the fact that due to a weakened heart condition the exertion required by the ordinary performance of the work is too great for the particular employee who undertakes to perform it does not make it a compensable accident. DeBruhl v. Kershaw County Sheriff’s Dept. (S.C.App. 1990) 303 S.C. 20, 397 S.E.2d 782.

Death arising out of a heart attack must not only occur during the course of, but must arise out of, the employment in order to be compensable. Pellum v. W. C. Chaplin Transport (S.C. 1967) 249 S.C. 348, 154 S.E.2d 432.

Normally, an accident involves some happening of a sudden nature, but the Supreme Court has extended the definition in heart cases to include those happenings which involve some activity that brings about unusual exertion and strain not normally incident to the employment. Pellum v. W. C. Chaplin Transport (S.C. 1967) 249 S.C. 348, 154 S.E.2d 432. Workers’ Compensation 514

A heart attack constitutes a compensable “accident” where it was induced by unusual strain and overexertion on the part of the claimant in the performance of his employment. Walsh v. U. S. Rubber Co. (S.C. 1961) 238 S.C. 411, 120 S.E.2d 685.

Evidence of unusual strain or exertion is essential to support an award for disability or death resulting from aggravation of heart trouble. West v. City of Spartanburg (S.C. 1960) 236 S.C. 553, 115 S.E.2d 295.

South Carolina is committed to the unusual exertion or strain rule in heart cases arising under the Workmen’s Compensation Act. Sims v. S. C. State Commission of Forestry (S.C. 1959) 235 S.C. 1, 109 S.E.2d 701.

In order to obtain an award for any accidental injury resulting from aggravation of heart trouble, there must be a sudden, unusual exertion, violence or strain. Price v. B. F. Shaw Co. (S.C. 1953) 224 S.C. 89, 77 S.E.2d 491.

Where an employee dies in the regular performance of his duties from a heart attack, although not at the time nor prior thereto doing any work requiring unusual exertion, the death is not compensable. Price v. B. F. Shaw Co. (S.C. 1953) 224 S.C. 89, 77 S.E.2d 491. Workers’ Compensation 535

36. —— Work conditions, heart attack

Workers’ compensation claimant’s heart condition did not arise out of and in the course of employment, when he was not subjected to unusual and extraordinary conditions of employment and had suffered multiple symptoms of heart disease for several years prior to the heart failure; treating physician testified as to the many symptoms claimant had experienced in the years prior to the heart attack, and, contrary to claimant’s assertion, the method used for determining pay did not cause claimant stress to a degree necessary to cause the heart attack. Watt v. Piedmont Automotive (S.C.App. 2009) 384 S.C. 203, 681 S.E.2d 615. Workers’ Compensation 555.7; Workers’ Compensation 571

Employee’s work conditions on day that he suffered fatal heart attack were unusual or extraordinary, as required for his death to be compensable under workers’ compensation law; burning harvested fields, which was usual task for farm employees, turned into the extraordinary task of managing an out‑of‑control fire threatening fifty‑five acres of unharvested wheat, employee spent several hours that afternoon helping contain the fire and its effects, and manager stated he had experienced only one other similar fire in forty years of farming and that he would “never forget it.” South Carolina Second Injury Fund v. Liberty Mut. Ins. Co. (S.C.App. 2003) 353 S.C. 117, 576 S.E.2d 199. Workers’ Compensation 571

Substantial evidence supported workers’ compensation commission’s finding that filling in for an absent employee in dye operation was an ordinary part of claimant’s job as department head, so that claimant’s heart attack was not induced by unusual or extraordinary conditions of his employment requiring abnormal exertion. Lockridge v. Santens of America, Inc. (S.C.App. 2001) 344 S.C. 511, 544 S.E.2d 842, rehearing denied, certiorari denied. Workers’ Compensation 571

Finding that employee’s ruptured aneurysm was not the result of his work that involved any unexpected exertion or unusually stressful conditions, and thus did not arise out of his employment, was supported by doctor’s testimony that the atherosclerosis which led to the ruptured aneurysm was longstanding and aggravated by his hypertension and renal disease, testimony of employee’s general manager that the employee’s job with sanitation company did not involve moving any heavy objects, and absence of evidence that there were any unexpected or extraordinary conditions at play that day. Jennings v. Chambers Development Co. (S.C.App. 1999) 335 S.C. 249, 516 S.E.2d 453, rehearing denied, certiorari denied. Workers’ Compensation 1419; Workers’ Compensation 1531.8

The Workers’ Compensation Board properly denied compensation to the widow of a grocery clerk who died of a heart attack while pursuing a suspected shoplifter, since the evidence supported the board’s finding that pursuit of a suspected shoplifter was outside the scope of the grocery clerk’s employment and constituted a direct and intentional violation of the employer’s specific and express policy against pursuing or detaining shoplifters. Wright v. Bi‑Lo, Inc. (S.C.App. 1994) 314 S.C. 152, 442 S.E.2d 186, rehearing denied, certiorari denied.

A decision of the full commission, that an employee’s death by cardiac arrhythmia did not result from unexpected strain, overexertion or unusual and extraordinary conditions of employment, was supported by substantial evidence where the employee was a senior supervisor, he was required to perform weekend duty, on the weekend of his death he had worked 2 hours on Saturday, 12 hours on Sunday, and his regular hours on Monday, he had died in his sleep early Tuesday morning, his supervisor testified that the work performed by the employee was usual and normal, and physician testimony as to the cause of the employee’s cardiac arrhythmia was contradictory. Hoxit v. Michelin Tire Corp. (S.C. 1991) 304 S.C. 461, 405 S.E.2d 407.

A heart attack suffered by a county sheriff during a 20‑hour workday while he was investigating the death of a friend, was not induced by unexpected strain or overexertion in the performance of his duties or by any unusual and extraordinary condition in his employment, and was therefore not a compensable accident, where the sheriff was a heavy smoker with high blood pressure and a significant family history of heart problems, and he admitted that being a sheriff was a stressful job. DeBruhl v. Kershaw County Sheriff’s Dept. (S.C.App. 1990) 303 S.C. 20, 397 S.E.2d 782. Workers’ Compensation 571

A medical doctor’s testimony that the employee’s job was “a very likely probability” in causing his congestive heart failure, combined with other testimony, was sufficient to establish a causal connection between the conditions of the employee’s employment and his heart attack. Cline v. Nosredna Corp., Inc. (S.C.App. 1986) 291 S.C. 75, 352 S.E.2d 291. Workers’ Compensation 1531.9(1)

Full commission’s finding of noncompensability for death of an employee who suffered a fatal heart attack while at home 4 days after his last day at work was supported by substantial, even if conflicting, evidence, including a showing that in performing his regular duties as a cement finisher a few days before his death, the employee, although obviously not feeling too well, did not seek medical attention nor request to stop work, and, further, that the deceased worked 8 to 10 hours per day, and while the job he was on was short crewed, it was any rush situation, and the temperature on his last workday was not exceptionally high. Hunter v. Patrick Const. Co. (S.C. 1986) 289 S.C. 46, 344 S.E.2d 613.

Evidence supports finding by commission that city employee’s heart attack was not compensable accident where it shows that heart attack, which occurred while employee was driving truck for city, was not induced by unexpected strain, overexertion, or unusual and extraordinary conditions in the course of performing his duties. Robinson v. City of Cayce (S.C. 1975) 265 S.C. 441, 219 S.E.2d 835.

Heart attack was a compensable accident where the decedent was engaged in an unusual investigation, under extraordinary conditions of employment, with unusually long hours, great mental stress and strain, emotional involvement, lack of sleep, time pressure, physical exertion, and other extraordinary conditions of employment at the time of his attack. This was not an expected or seasonal change in routine, but was unusual and extraordinary. McWhorter v. South Carolina Dept. of Ins. (S.C. 1969) 252 S.C. 90, 165 S.E.2d 365.

A heart attack suffered by a general manager and supervisor of the operations of a gas company constituted a compensable accident where the evidence showed that while his ordinary working day was about eight and one‑half hours, prior to the attack, the claimant was required to work, during a period of conversion from propane to natural gas, sixteen hours per day in order to perform the extra duty of supervising the conversion work. McWhorter v. South Carolina Dept. of Ins. (S.C. 1969) 252 S.C. 90, 165 S.E.2d 365.

It is usual for the driver of a petroleum truck to have additional work during cold weather and less work in other seasons, and this is to be expected; hence, prolonged hours over a period of time resulting in a heart attack under such circumstances do not constitute an accident under the terms of the Workmen’s Compensation Law. Pellum v. W. C. Chaplin Transport (S.C. 1967) 249 S.C. 348, 154 S.E.2d 432.

37. —— Pre‑existing condition, heart attack

Even though there is a pre‑existing pathology which may have been a contributing factor. Kearse v South Carolina Wildlife Resources Dept. (1960) 236 SC 540, 115 SE2d 183. Walsh v U. S. Rubber Co. (1961) 238 SC 411, 120 SE2d 685. Walker v Columbia (1966) 247 SC 241, 146 SE2d 856. McWhorter v South Carolina Dept. of Ins. (1969) 252 SC 90, 165 SE2d 365.

A heart injury, when brought on by overexertion or strain in the course of work, is compensable, though a pre‑existing pathology may have been a contributing factor. But in order to obtain an award for any accidental injury resulting from aggravation of heart trouble, there must be a sudden, unusual exertion, violence or strain. Raley v Camden (1952) 222 SC 303, 72 SE2d 572. Price v B. F. Shaw Co. (1953) 224 SC 89, 77 SE2d 491.

For workers’ compensation purposes, employee’s fatal heart attack was caused by employee’s unusual work conditions, which occurred when employee’s usual task of burning harvested fields turned into extraordinary task of managing out‑of‑control fire threatening fifty‑five acres; duties that employee was performing on the afternoon of his death were different from his normal duties, employee had pre‑existing severe coronary artery disease, and employee was found dead as a result of a heart attack after a long afternoon of dealing with the fire. South Carolina Second Injury Fund v. Liberty Mut. Ins. Co. (S.C.App. 2003) 353 S.C. 117, 576 S.E.2d 199. Workers’ Compensation 571

A cardiologist’s opinion that, although job‑related exercise drew the claimant’s attention to his progressively deteriorating cardiac condition, the exercise did not aggravate the claimant’s pre‑existing cardiac condition, constituted substantial evidence to support the commission’s finding that the claimant’s subsequent heart problems were not related to his employment activity. Owings v. Anderson County Sheriff’s Dept. (S.C. 1993) 315 S.C. 297, 433 S.E.2d 869, rehearing denied.

An employee’s heart attack, which was the result of a pre‑existing coronary condition which was aggravated and accelerated by climbing in excessive heat in the place of his employment, was a compensable accident. A heart attack which results from the employee’s engaging in the employment, whether due to an unusual or extraordinary condition or not, is an accidental injury within the meaning of the Worker’s Compensation Act; if it results from the conditions under which the work is carried on, there is no reason why it should not be compensable. Holley v. Owens Corning Fiberglas Corp. (S.C.App. 1990) 301 S.C. 519, 392 S.E.2d 804, certiorari granted, opinion adopted 302 S.C. 518, 397 S.E.2d 377.

A heart attack resulting from a pre‑existing pathology coupled with sudden, unusual exertion or strain is compensable. Cline v. Nosredna Corp., Inc. (S.C.App. 1986) 291 S.C. 75, 352 S.E.2d 291. Workers’ Compensation 555.7

Where bus driver who made sharp turn with steering wheel, requiring considerable effort, in heavy traffic on hot day, experienced sharp pain in chest which required his hospitalization within several days with coronary infarction and congestive heart failure, and medical testimony was to effect he had pre‑existing heart condition, driver was allowed compensation for total disability stemming from unusual exertion or strain which aggravated pre‑existing disease. Ricker v. Village Management Corp. (S.C. 1957) 231 S.C. 47, 97 S.E.2d 83.

38. —— Unusual exertion or strain, heart attack

Finding by full Workers’ Compensation Commission, in denying claimant benefits, that claimant’s heart attack was not induced by unexpected strain or overexertion in picking up and transporting large piece of equipment, departing seven hours past schedule and driving part of route without required permits, was supported by substantial evidence; although claimant alleged that haul was stressful, his boss and co‑worker stated that employer did not impose deadlines, it was not unusual for employees to deviate from their routes due to construction, claimant had left without permits on prior deliveries and would pick up faxed copy of permits at nearest truck stop, and claimant smoked cigarettes, had abused alcohol, suffered from high blood pressure, and had family history of heart disease. Jordan v. Kelly Co., Inc. (S.C. 2009) 381 S.C. 483, 674 S.E.2d 166. Workers’ Compensation 1531.9(2)

The fact that, due to his physical condition, the exertion required by the ordinary performance of employee’s work for sanitation company may have been too great for him did not make his ruptured aneurysm a compensable accident under workers’ compensation law. Jennings v. Chambers Development Co. (S.C.App. 1999) 335 S.C. 249, 516 S.E.2d 453, rehearing denied, certiorari denied. Workers’ Compensation 535

Substantial evidence did not support the factual finding of a workers’ compensation commission that an employee’s heart attack was a compensable accident induced by unexpected strain or overexertion where (1) the employee, who had worked as a mechanic for the employer for over 10 years, requested a part from the parts room, (2) he was told that they did not have one, (3) the parts handler would not tell him whether the part would be obtained by lunch, (4) the employee got angry, but returned to his work, and (5) he had a heart attack 30 minutes later, but there was no cursing or threat of bodily harm and the employee had had difficulty obtaining parts in the past. Fulmer v. South Carolina Elec. & Gas Co. (S.C.App. 1991) 306 S.C. 34, 410 S.E.2d 25.

Industrial commission’s finding that school janitor’s heart attack arose out of and in course of employment was supported by evidence showing heart attack was precipitated by janitor’s overexerting himself in working 2 nights each week in addition to his normal duties to cleanup after night school classes held in public school building. Canady v. Charleston County School Dist. (S.C. 1975) 265 S.C. 21, 216 S.E.2d 755.

Whether climbing the stairs by the deceased on the occasion in question constituted an unusual or extraordinary exertion must be determined in the light of his usual and normal duties as jailor. Black v. Barnwell County (S.C. 1964) 243 S.C. 531, 134 S.E.2d 753. Workers’ Compensation 571

It is reasonably inferable from all of the facts and circumstances that the deceased in climbing the stairs was about the normal and usual duties of his employment as jailor and that such activity did not constitute unusual and extraordinary exertion. Black v. Barnwell County (S.C. 1964) 243 S.C. 531, 134 S.E.2d 753.

An absence of evidence of unusual strain or exertion in the performance of claimant’s duties as jailer on an unusually busy night was held to preclude recovery for a fatal heart attack. West v. City of Spartanburg (S.C. 1960) 236 S.C. 553, 115 S.E.2d 295.

Climbing up and down fire tower steps was not unusual in the work of a fire tower watchman who died of a heart attack and hence was not an unusual exertion or strain. Sims v. S. C. State Commission of Forestry (S.C. 1959) 235 S.C. 1, 109 S.E.2d 701.

Where employee by compensable accident suffered deep and extensive cut of right forearm, bled profusely and suffered symptoms of shock, and was quite active before the accident but never resumed work afterwards and complained of chest pains and within two months of the injury suffered a fatal heart attack, finding by Commission that death was compensable was justified even though medical testimony was conflicting as to causal connection between injury and death. Scott v. Havnear Motor Co. (S.C. 1955) 226 S.C. 580, 86 S.E.2d 475.

Where employee died of heart disease while throwing a light rope some 5 or 6 feet, such death was not the result of an accident arising out of his employment. Rivers v. V. P. Loftis Co. (S.C. 1949) 214 S.C. 162, 51 S.E.2d 510. Workers’ Compensation 1531.9(1)

Where the undisputed evidence showed that a policeman, immediately after making an arrest in which he was required to exercise considerable physical effort, died from a strain on his heart, directly resulting from over‑exertion, and that he was suffering from myocarditis but had been told by his doctor to go back to work, a finding that the deceased died as the result of an accident arising out of and in the course of this employment had sufficient evidentiary support. Green v. City of Bennettsville (S.C. 1941) 197 S.C. 313, 15 S.E.2d 334.

39. Cerebral thrombosis

A cerebral thrombosis suffered by an employee constituted a compensable accident where the evidence showed that for several days prior to the attack the claimant had worked sixteen to eighteen hours a day as a game warden, far in excess of his usual hours of work, and during that period underwent physical exertion in dragging boats and pushing an automobile. McWhorter v. South Carolina Dept. of Ins. (S.C. 1969) 252 S.C. 90, 165 S.E.2d 365.

Rules laid down in heart cases should be applied to claims for disability or death resulting from a cerebral thrombosis. Kearse v. South Carolina Wildlife Resources Dept. (S.C. 1960) 236 S.C. 540, 115 S.E.2d 183. Workers’ Compensation 532

40. Aggravation of previous injury

If facts show a causal connection between the injury and the development of cancer, then the two cannot be separated, and the victim of the cancer, or his dependents, is entitled to compensation, and the same principle holds good in a case where the evidence shows a causal connection between the injury and the aggravation or acceleration of sarcoma or cancer existing prior thereto. Hughes v Easley Cotton Mill No. 1 (1947) 210 SC 193, 42 SE2d 64. Glover v Columbia Hospital of Richland County (1960) 236 SC 410, 114 SE2d 565.

Where a previously diseased condition is aggravated by injury or accident arising out of or in the course of employment, and this results in death or disability, there is a compensable injury. Holly v Spartan Grain & Mill Co. (1947) 210 SC 183, 42 SE2d 59. Scott v Havnear Motor Co. (1955, SC) 226 SC 580, 86 SE2d 475. Kearse v South Carolina Wildlife Resources Dept. (1960) 236 SC 540, 115 SE2d 183.

Where a latent or quiescent weakened, but not disabling, condition resulting from disease is by accidental injury in the course and scope of employment, aggravated, accelerated or activated, with resulting disability, such disability is compensable. Glover v Columbia Hospital of Richland County (1960) 236 SC 410, 114 SE2d 565. Gordon v E. I. Du Pont de Nemours & Co. (1955) 228 SC 67, 88 SE2d 844.

In order to find claimant totally disabled, there was no requirement that claimant’s pre‑existing condition aggravated injury from fall at work or that injury aggravated pre‑existing condition, so long as there was a greater disability simply from combined effects of injury and pre‑existing condition, and thus Workers’ Compensation Commission was required on remand to make specific factual findings as to claimant’s other medical conditions and apply alternative analysis of aggravation or combined effects. Bartley v. Allendale County School Dist. (S.C. 2011) 392 S.C. 300, 709 S.E.2d 619. Workers’ Compensation 552; Workers’ Compensation 1950

The occupational disease statute within the Workers’ Compensation Act is satisfied where the claimant is able to show simply that the employment increased the risk of the disease. Pee v. AVM, Inc. (S.C. 2002) 352 S.C. 167, 573 S.E.2d 785. Workers’ Compensation 547

Court of Appeals erred in finding the aggravation of a pre‑existing injury where there was substantial evidence supporting the Workers’ Compensation Commission’s holding that the accident, as reported by claimant, did not happen and that, in fact, claimant had “staged” the accident. Sharpe v. Case Produce, Inc. (S.C. 1999) 336 S.C. 154, 519 S.E.2d 102. Workers’ Compensation 1969

Even if claimant had previously injured his back in altercation with his girlfriend a few days before he sustained back injury causing paralysis while loading tomatoes into his truck for his employer, he was entitled to workers’ compensation benefits for aggravation or acceleration of this preexisting condition, where medical evidence showed that claimant was injured in work‑related accident, claimant worked at least two days prior to aggravation, and claimant did not experience paralysis or seek medical treatment until he attempted to load tomatoes. Sharpe v. Case Produce Co. (S.C.App. 1997) 329 S.C. 534, 495 S.E.2d 790, rehearing denied, certiorari granted, reversed 336 S.C. 154, 519 S.E.2d 102. Workers’ Compensation 555.3

An employee’s false statement in an employment application bars recovery of workers’ compensation benefits if (1) the employee knowingly and wilfully makes a false representation as to his physical condition, (2) the employer relies on the representation and the reliance is a substantial factor in the hiring, and (3) there is a causal connection between the false representation and the injury; however, there is no additional requirement that the employer terminate the employment on learning of the false statement where the employer learns of the false statement after the injury. Small v. Oneita Industries (S.C. 1995) 318 S.C. 553, 459 S.E.2d 306, rehearing denied. Workers’ Compensation 773

The great weight of authority holds that, in a workers’ compensation action, the aggravation of the primary injury by medical or surgical treatment is compensable. Mullinax v. Winn‑Dixie Stores, Inc. (S.C.App. 1995) 318 S.C. 431, 458 S.E.2d 76, rehearing denied, appeal dismissed. Workers’ Compensation 957

In a workers’ compensation action, new injuries resulting indirectly from treatment or the original injury are also compensable. Mullinax v. Winn‑Dixie Stores, Inc. (S.C.App. 1995) 318 S.C. 431, 458 S.E.2d 76, rehearing denied, appeal dismissed. Workers’ Compensation 957

In a workers’ compensation action, a work‑related accident which aggravates or accelerates a pre‑existing condition, infirmity, or disease is also compensable. Mullinax v. Winn‑Dixie Stores, Inc. (S.C.App. 1995) 318 S.C. 431, 458 S.E.2d 76, rehearing denied, appeal dismissed.

In a workers’ compensation action, a condition is compensable unless it is due solely to the natural progression of a pre‑existing condition; it is no defense that the accident, standing alone, would not have caused the claimant’s condition, because the employer takes the employee as it finds him or her. Mullinax v. Winn‑Dixie Stores, Inc. (S.C.App. 1995) 318 S.C. 431, 458 S.E.2d 76, rehearing denied, appeal dismissed. Workers’ Compensation 552; Workers’ Compensation 552.5

An employee was entitled to workers’ compensation benefits for an injury to her back caused by lifting a heavy tray in the course of her employment where the record showed that, even though she had a prior history of kidney problems and initially self‑diagnosed her pain as a kidney stone, the pain occurred as she was picking up the tray, and all treating physicians agreed that her pain was not related to her kidneys, but was in fact musculoskeletal. McGuffin v. Schlumberger‑Sangamo (S.C. 1992) 307 S.C. 184, 414 S.E.2d 162.

Conflicting medical testimony supported the Industrial Commission’s finding that an industrial accident had aggravated worker’s pre‑existing thrombophlebitis. Brown v. R.L. Jordan Oil Co. (S.C. 1987) 291 S.C. 272, 353 S.E.2d 280.

Circuit Court properly dismissed worker’s compensation claim filed by employee who sustained back injury while working for respondent, where (1) claimant had previously been awarded substantial worker’s compensation benefits for permanent partial disability resulting from back injury sustained while working for former employer, (2) on subsequent job application he knowingly and wilfully made false representation that he had no physical defects or prior injuries, (3) respondent relied upon false representation in hiring claimant, and (4) record, which included claimant’s testimony that same part of back had been point of both injuries and expert medical testimony that claimant’s condition reflected cumulative effect of successive injuries, sustained finding of causal connection between two injuries. Givens v. Steel Structures, Inc. (S.C. 1983) 279 S.C. 12, 301 S.E.2d 545.

Commission’s finding that worker’s death resulted from workplace accident which aggravated pre‑existing stomach condition is adequately supported by evidence. Edwards v. Pettit Const. Co., Inc. (S.C. 1979) 273 S.C. 576, 257 S.E.2d 754.

Expert medical testimony that cause of death of employee who sustained fracture to scapula at work and died 10 days later was aggravation by injury to pre‑existing diabetic condition sufficiently supported commission’s finding that death was work‑related. Wright v. Graniteville Co. Vaucluse Division (S.C. 1976) 266 S.C. 88, 221 S.E.2d 777.

Where a previously existing condition or disease is aggravated by injury or accident arising out of or in the course of employment and this results in disability, there is a compensable injury. Arnold v. Benjamin Booth Co. (S.C. 1971) 257 S.C. 337, 185 S.E.2d 830. Workers’ Compensation 554

If the facts show a causal connection between the injury and the development, aggravation, or acceleration of cancer, then the two cannot be separated, and the victim of the cancer, or his dependents, is entitled to compensation. Herndon v. Morgan Mills, Inc. (S.C. 1965) 246 S.C. 201, 143 S.E.2d 376. Workers’ Compensation 622

Where claimant’s osteoarthritis in both knees probably existed prior to his fall in the course of his employment, but the latter aggravated the formerly dormant disease, the resulting disability and disfigurement is compensable. Daley v. Public Sav. Life Ins. Co. (S.C. 1960) 236 S.C. 236, 113 S.E.2d 758. Workers’ Compensation 555.9

Where a latent, but not disabling, condition has resulted from a prior accidental injury, and the disability is proximately caused by a subsequent accidental injury, compensability is referable to that injury and not to the earlier injury. Gordon v. E. I. Du Pont De Nemours & Co. (S.C. 1955) 228 S.C. 67, 88 S.E.2d 844. Workers’ Compensation 598

If one becomes ill while at work from natural causes, the state or condition is not accidental since it is a natural result or consequence and might be termed normal and to be expected. If, however, there is a subsisting condition of illness or incapacity or physical disability which is caused, increased, or accelerated by some act or event coming by chance or happening fortuitously, then the requisite quality or condition of the injury will exist so as to make it accidental. Neither is it necessary that the accidental quality or condition be created by a wound or external violence. Hiers v. Brunson Const. Co. (S.C. 1952) 221 S.C. 212, 70 S.E.2d 211.

The aggravation of a pre‑existing disease constitutes an accident within the meaning of the Workmen’s Compensation Law, but the aggravation of the pre‑existing disease must arise from some external force, and must not be caused by the natural result of the pre‑existing disease. Radcliffe v. Southern Aviation School (S.C. 1946) 209 S.C. 411, 40 S.E.2d 626. Workers’ Compensation 552.5

The aggravation, acceleration, or lighting up of a pre‑existing or latent infirmity or weakened physical condition may constitute a disability of such a character as to come within the meaning of workmen’s compensation acts, even though the accident would have caused no injury to a perfectly normal, healthy individual. Ferguson v. State Highway Department (S.C. 1941) 197 S.C. 520, 15 S.E.2d 775. Workers’ Compensation 554

Even where an injury aggravates a pre‑existing condition or disease so that the disability is continued for a longer period than would normally result from the injury alone, such disability is nevertheless compensable. Green v. City of Bennettsville (S.C. 1941) 197 S.C. 313, 15 S.E.2d 334. Workers’ Compensation 554

41. Admissibility of evidence

Probative value of expert testimony, based upon hypothetical facts, stands or falls with existence or nonexistence of facts upon which it is predicated. Glenn v Dunean Mills (1963) 242 SC 535, 131 SE2d 696. Chapman v Foremost Dairies, Inc. (1967) 249 SC 438, 154 SE2d 845.

It is generally true that a hypothetical question should assume substantially all material facts relating to the subject on which the judgment of the expert is sought and a question which does not contain all the facts essential to some theory within the range of the evidence should be excluded, provided the objection thereto specifically points out the imperfection. Chapman v. Foremost Dairies, Inc. (S.C. 1967) 249 S.C. 438, 154 S.E.2d 845.

42. Burden of proof

The burden is upon the claimant to prove the facts which render the injury compensable. Mims v Nehi Bottling Co. (1951) 218 SC 513, 63 SE2d 305. Kennedy v Williamsburg County (1963) 242 SC 477, 131 SE2d 512.

The burden rests upon the claimants to show by competent testimony, not only the fact of injury, but that it occurred in connection with the employment of the deceased; and to furnish evidence from which the inference can logically be drawn that the injury arose out of and in the course of the employment. Jeffers v Manetta Mills (1939) 190 SC 435, 3 SE2d 489. Bagwell v Ernest Burwell, Inc. (1955) 227 SC 444, 88 SE2d 611. Fowler v Abbott Motor Co. (1960) 236 SC 226, 113 SE2d 737.

Proof that a claimant sustained an injury and that it arose out of and in the course of his employment may be established by circumstantial as well as by direct evidence, where the circumstances surrounding the occurrence of the injury are such as to lead an unprejudiced mind reasonably to infer that it was caused by accident; the evidence need not negative all other causes of resultant injury in compensation proceedings. Holly v Spartan Grain & Mill Co. (1947) 210 SC 183, 42 SE2d 59. Woodson v Kendall Mills (1948) 213 SC 395, 49 SE2d 597. Ferguson v State Highway Dept. (1941) 197 SC 520, 15 SE2d 775.

The necessary requirements for compensation may be established by circumstantial evidence. Bagwell v Ernest Burwell, Inc. (1955) 227 SC 444, 88 SE2d 611. Corley v South Carolina Tax Com. (1960) 237 SC 439, 117 SE2d 577.

The burden is on the workers’ compensation claimant to prove such facts as will render the injury compensable, and such an award must not be based on surmise, conjecture, or speculation. Turner v. SAIIA Construction (S.C.App. 2016) 419 S.C. 98, 796 S.E.2d 150, rehearing denied. Workers’ Compensation 649.2

Claimant bears the burden of providing facts that would bring her injuries within the Workers’ Compensation Law. Nicholson v. South Carolina Dept. of Social Services (S.C.App. 2013) 405 S.C. 537, 748 S.E.2d 256, rehearing denied, reversed 411 S.C. 381, 769 S.E.2d 1. Workers’ Compensation 1339

Workers’ compensation claimant, who claimed she developed respiratory problems as a result of continued exposure to chemicals while working for employer, was required to establish the following six elements to recover occupational disease benefits: (1) a disease; (2) the disease must arise out of and in the course of the claimant’s employment; (3) the disease must be due to hazards in excess of those hazards that are ordinarily incident to employment; (4) the disease must be peculiar to the occupation in which the claimant was engaged; (5) the hazard causing the disease must be one recognized as peculiar to a particular trade, process, occupation, or employment; and (6) the disease must directly result from the claimant’s continuous exposure to the normal working conditions of the particular trade, process, occupation, or employment. Brunson v. American Koyo Bearings (S.C.App. 2011) 395 S.C. 450, 718 S.E.2d 755, rehearing denied. Workers’ Compensation 548; Workers’ Compensation 549.2

The claimant has the burden of proving facts that will bring the injury within the workers’ compensation law. Bartley v. Allendale County School Dist. (S.C.App. 2009) 381 S.C. 262, 672 S.E.2d 809, rehearing denied, certiorari granted, reversed 392 S.C. 300, 709 S.E.2d 619. Workers’ Compensation 1339

A claimant has the burden of proving facts sufficient to allow recovery under the Workers’ Compensation Act. Hall v. Desert Aire, Inc. (S.C.App. 2007) 376 S.C. 338, 656 S.E.2d 753, rehearing denied. Workers’ Compensation 1339

The burden lies with workers’ compensation claimant to demonstrate causation by a preponderance of the evidence. South Carolina Second Injury Fund v. Liberty Mut. Ins. Co. (S.C.App. 2003) 353 S.C. 117, 576 S.E.2d 199. Workers’ Compensation 1492

The claimant has the burden of proving facts that will bring the injury within the workers’ compensation law, and such award must not be based on surmise, conjecture or speculation. Jennings v. Chambers Development Co. (S.C.App. 1999) 335 S.C. 249, 516 S.E.2d 453, rehearing denied, certiorari denied. Workers’ Compensation 1339

Workers’ compensation claimant seeking compensation for depression stemming from the deterioration of his work‑related foot injury was not required to prove that the depression was incident to an unusual and extraordinary condition of employment. Getsinger v. Owens‑Corning Fiberglas Corp. (S.C.App. 1999) 335 S.C. 77, 515 S.E.2d 104, rehearing denied. Workers’ Compensation 1357

Mental injuries are compensable under workers’ compensation law if induced either by physical injury or by unusual or extraordinary conditions of employment. Getsinger v. Owens‑Corning Fiberglas Corp. (S.C.App. 1999) 335 S.C. 77, 515 S.E.2d 104, rehearing denied. Workers’ Compensation 546(1); Workers’ Compensation 546(2)

Workers’ compensation claimant has burden of proving facts that show that injury arose out of employment, and award of benefits must not be based on surmise, conjecture or speculation. Clade v. Champion Laboratories (S.C. 1998) 330 S.C. 8, 496 S.E.2d 856. Workers’ Compensation 1359; Workers’ Compensation 1409

In a workers’ compensation action, circumstantial evidence may be used to prove causation. Mullinax v. Winn‑Dixie Stores, Inc. (S.C.App. 1995) 318 S.C. 431, 458 S.E.2d 76, rehearing denied, appeal dismissed. Workers’ Compensation 1414

Claimant’s evidence that employment as cement truckdriver required that he operate truck with open cab, thus exposing himself to high humidity, fog, high temperatures, cement dust and frequent rain showers, along with medical evidence that his emphysema was most likely caused by exposure to these elements, satisfied claimant’s burden of proof that injury arose out of and in course of employment. Sturkie v. Ballenger Corp. (S.C. 1977) 268 S.C. 536, 235 S.E.2d 120.

Where claimant sustains a bodily injury from a fight in the parking lot after work hours with a co‑worker the claimant who wants protection under this section [Code 1962 Section 72‑14] must show that the fracas grows out of the employment, that the claimant is not the aggressor; and that there were damages proximately sustained from such fracas. Byrd v. Hanes Corp. (S.C. 1974) 262 S.C. 535, 205 S.E.2d 825.

Circumstantial evidence and lay testimony can be sufficient to support a finding of casual connection in a workmen’s compensation case. Arnold v. Benjamin Booth Co. (S.C. 1971) 257 S.C. 337, 185 S.E.2d 830.

Circumstantial evidence and lay testimony need not reach such a degree of certainty as to exclude every reasonable or possible conclusion other than that reached by the Commission. It is sufficient if the facts and circumstances proved give rise to a reasonable inference that there was a causal connection between the disability and the injury. Arnold v. Benjamin Booth Co. (S.C. 1971) 257 S.C. 337, 185 S.E.2d 830.

Since it was conceded that the deceased was about the duties of his employment when he suffered the fatal coronary occlusion, the burden was upon dependent widow to show by a preponderance of the evidence a causal connection between the employment and the heart attack. Lorick v. South Carolina Elec. & Gas Co. (S.C. 1965) 245 S.C. 513, 141 S.E.2d 662.

The death must be proximately caused by an accident that arose out of the employment; and the burden is on the claimant to establish such fact. Lorick v. South Carolina Elec. & Gas Co. (S.C. 1965) 245 S.C. 513, 141 S.E.2d 662. Workers’ Compensation 600; Workers’ Compensation 609; Workers’ Compensation 1362

To establish that the death of a sheriff acting as jailer resulted from a compensable accident, it was necessary for the claimant to prove (1) a causal connection between the climbing of stairs in the jail and the heart attack from which the deceased died and (2) that the climbing of the stairs constituted an unusual and extraordinary exertion on his part. Black v. Barnwell County (S.C. 1964) 243 S.C. 531, 134 S.E.2d 753.

Where medical testimony not solely relied upon to establish causal connection, presence or absence of such medical testimony may be conclusive depending upon particular facts and circumstances of case. Kennedy v. Williamsburg County (S.C. 1963) 242 S.C. 477, 131 S.E.2d 512.

It is sufficient if facts or sequence of events proved give rise to reasonable inference of causal connection between claimant’s disability and his prior injury. Kennedy v. Williamsburg County (S.C. 1963) 242 S.C. 477, 131 S.E.2d 512.

But where testimony of medical experts is not solely relied upon to establish such causal connection, whether the presence or absence of such medical testimony is conclusive depends upon particular facts and circumstances of the case. Grice v. Dickerson, Inc. (S.C. 1962) 241 S.C. 225, 127 S.E.2d 722.

In order to recover, it is incumbent on the claimant to show that death was the result of an accident which arose out of and in the course of the employment of the deceased. Jake v. Jones (S.C. 1962) 240 S.C. 574, 126 S.E.2d 721.

That death was the result of an accident which arose out of and in the course of the employment of the deceased may be shown by either direct or circumstantial evidence. Jake v. Jones (S.C. 1962) 240 S.C. 574, 126 S.E.2d 721.

The burden is upon claimant to prove that his work has at least a part in creating the necessity of the trip. Corley v. South Carolina Tax Commission (S.C. 1960) 237 S.C. 439, 117 S.E.2d 577.

The test as to whether the injury or death arose out of or in the course of employment when caused or hastened by atmospheric conditions, is whether, under all the circumstances, the employee was exposed to a greater risk by reason of his employment and duties than was imposed upon an ordinary member of the public. Hiers v. Brunson Const. Co. (S.C. 1952) 221 S.C. 212, 70 S.E.2d 211. Workers’ Compensation 637

A compensation claimant must bring himself within the law by offering evidence or admission of an accident; that burden is upon him. Fleming v. Appleton Co. (S.C. 1949) 214 S.C. 81, 51 S.E.2d 363. Workers’ Compensation 1361

Where the circumstances surrounding an injury sustained by the deceased are such as to lead an unprejudiced mind reasonably to infer that it was caused by accident, the evidence need not negative all other possible causes of death. Jeffers v. Manetta Mills (S.C. 1939) 190 S.C. 435, 3 S.E.2d 489. Workers’ Compensation 1414; Workers’ Compensation 1422

Necessarily it is incumbent upon the claimant to show that he has sustained an injury by accident, arising out of and in the course of his employment in order to make his claim compensable and bring it within the provisions of the Act. Spearman v. F.S. Royster Guano Co. (S.C. 1938) 188 S.C. 393, 199 S.E. 530. Workers’ Compensation 516; Workers’ Compensation 604

43. Presumptions

There is a natural presumption, or a presumption of fact, that one charged with the performance of a duty and injured while performing such duty, or found injured at a place where his duty may have required him to be, is injured in the course of, and as a consequence of, the employment. Owens v Ocean Forest Club, Inc. (1941) 196 SC 97, 12 SE2d 839. Halpern v De Jay Stores, Inc. (1960) 236 SC 587, 115 SE2d 297. Packer v Corbett Canning Co. (1961) 238 SC 431, 120 SE2d 398. Jake v Jones (1962) 240 SC 574, 126 SE2d 721.

The unexplained death presumption, in which one charged with the performance of a duty and injured while performing such duty, or found injured where his duty required him to be, is injured in the course of, and as a consequence of, his employment, does not apply to workers’ compensation claims in which the claimant survives the injury but has no memory of events leading up to the injury. Turner v. SAIIA Construction (S.C.App. 2016) 419 S.C. 98, 796 S.E.2d 150, rehearing denied. Workers’ Compensation 1358

The unexplained death presumption, in which one charged with the performance of a duty and injured while performing such duty, or found injured where his duty required him to be, is injured in the course of, and as a consequence of, his employment, is applied simply to establish that the injury occurred in the course of and as a consequence of employment, as would support compensability of injury under the Workers’ Compensation Act, but cannot be applied to establish the incident of accident. Turner v. SAIIA Construction (S.C.App. 2016) 419 S.C. 98, 796 S.E.2d 150, rehearing denied. Workers’ Compensation 1358

The “unexplained death presumption” is a natural presumption, or a presumption of fact, that one charged with the performance of a duty and injured while performing such duty, or found injured where his duty required him to be, is injured in the course of, and as a consequence of, his employment as would support compensability of injury under the Workers’ Compensation Act. Turner v. SAIIA Construction (S.C.App. 2016) 419 S.C. 98, 796 S.E.2d 150, rehearing denied. Workers’ Compensation 1358

The “unexplained death presumption” could not be used to establish that employee’s ruptured aneurysm arose out of the employee’s employment. Jennings v. Chambers Development Co. (S.C.App. 1999) 335 S.C. 249, 516 S.E.2d 453, rehearing denied, certiorari denied. Workers’ Compensation 1359; Workers’ Compensation 1531.8

The “unexplained death presumption” is a natural presumption, or a presumption of fact, that one charged with the performance of a duty and injured while performing such duty, or found injured where his duty required him to be, is injured in the course of, and as a consequence of, his employment. Jennings v. Chambers Development Co. (S.C.App. 1999) 335 S.C. 249, 516 S.E.2d 453, rehearing denied, certiorari denied. Workers’ Compensation 1358

The “unexplained death presumption” is applied simply to establish that the injury occurred in the course of and as a consequence of employment; the presumption cannot be applied to establish the incident of accident. Jennings v. Chambers Development Co. (S.C.App. 1999) 335 S.C. 249, 516 S.E.2d 453, rehearing denied, certiorari denied. Workers’ Compensation 1358

Where an employee is found injured or dead at a time and place where his employment reasonably required him to be, there is a presumption of fact that the death arose out of and in the course of the employment. Eagles v. Golden Cove, Inc. (S.C. 1973) 260 S.C. 113, 194 S.E.2d 397. Workers’ Compensation 1358

A presumption may not be availed of to establish the incident of accident. Packer v. Corbett Canning Co. (S.C. 1961) 238 S.C. 431, 120 S.E.2d 398. Workers’ Compensation 1361

The presumption that one charged with the performance of a duty and injured while performing such duty, or found injured at a place where his duty may have required him to be, is injured, in the course of, and as a consequence of, the employment cannot be applied where the employee fails to show that his injury occurred at a place where duty in behalf of his employer may have required him to be. Fowler v. Abbott Motor Co. (S.C. 1960) 236 S.C. 226, 113 S.E.2d 737.

44. Questions of fact

In general, whether an accident arises out of and is in the course and scope of employment is a question of fact for the full Workers’ Compensation Commission. Whigham v. Jackson Dawson Communications (S.C. 2014) 410 S.C. 131, 763 S.E.2d 420, rehearing denied. Workers’ Compensation 1719

Where there are no disputed facts, the question of whether an accident is compensable is a question of law in workers compensation case. Whigham v. Jackson Dawson Communications (S.C. 2014) 410 S.C. 131, 763 S.E.2d 420, rehearing denied. Workers’ Compensation 1716

The question of whether an injury arises out of employment is largely a question of fact for the Workers’ Compensation Commission. Nicholson v. South Carolina Dept. of Social Services (S.C.App. 2013) 405 S.C. 537, 748 S.E.2d 256, rehearing denied, reversed 411 S.C. 381, 769 S.E.2d 1. Workers’ Compensation 1719

Question of whether an injury arises out of and is in the course and scope of employment is largely a question of fact for the Workers’ Compensation Commission’s appellate panel. Houston v. Deloach & Deloach (S.C.App. 2008) 378 S.C. 543, 663 S.E.2d 85. Workers’ Compensation 1719

Whether an accident arises out of and is in the course and scope of employment is largely a question of fact for the Appellate Panel of the Workers’ Compensation Commission. Hall v. Desert Aire, Inc. (S.C.App. 2007) 376 S.C. 338, 656 S.E.2d 753, rehearing denied. Workers’ Compensation 1719

Workers’ compensation award is authorized only if employer‑employee relationship existed at time of alleged injury, and issue of whether subsequent reinstatement of employee with original effective service date meant that he never left employment of company, and therefore his claim of outrageous conduct arose in course of his employment, is issue of fact. Nash v. AT & T Nassau Metals (S.C.App. 1987) 294 S.C. 248, 363 S.E.2d 695, reversed 298 S.C. 428, 381 S.E.2d 206.

Credibility and weight of a doctor’s testimony is for the trier of facts. Chapman v. Foremost Dairies, Inc. (S.C. 1967) 249 S.C. 438, 154 S.E.2d 845.

If the evidence was conflicting upon these issues, or either of them, such conflicts in the evidence could only be resolved by the Industrial Commission, the fact‑finding body. Black v. Barnwell County (S.C. 1964) 243 S.C. 531, 134 S.E.2d 753.

Causal connection between an injury sustained in a compensable accident and the subsequent death of an employee is plainly a question of fact; and, when controverted, must be found upon the consideration of relevant evidence in order to warrant an award of compensation for the death. Mack v. Branch No. 12, Post Exchange, Fort Jackson (S.C. 1945) 207 S.C. 258, 35 S.E.2d 838. Workers’ Compensation 1717; Workers’ Compensation 1733

45. Sufficiency of evidence

Substantial evidence supported Workers’ Compensation Commission’s finding that claimant failed to establish causal connection between his unexplained fall and his employment, and thus claimant did not suffer a compensable injury by accident within the course and scope of his employment, although claimant was found lying on his back next to his dump truck; evidence indicated that claimant had no recollection of event and could not describe circumstances regarding fall off of truck, and claimant’s co‑workers did not see claimant fall and only found him after he was lying on the ground. Turner v. SAIIA Construction (S.C.App. 2016) 419 S.C. 98, 796 S.E.2d 150, rehearing denied. Workers’ Compensation 1591

Even if unexplained death presumption, in which one charged with the performance of a duty and injured while performing such duty, or found injured where his duty required him to be, was injured in the course of, and as a consequence of, his employment, applied to non‑fatal injuries where workers’ compensation claimant had no memory of events leading up to injury, employer presented sufficient evidence to rebut application of presumption to back injuries that claimant allegedly sustained prior to being found lying on ground next to his dump truck; evidence indicated that claimant had very recent, non‑work‑related preexisting back conditions. Turner v. SAIIA Construction (S.C.App. 2016) 419 S.C. 98, 796 S.E.2d 150, rehearing denied. Workers’ Compensation 1358

Substantial evidence supported Appellate Panel of the Workers’ Compensation Commission’s finding that claimant did not suffer an injury by accident arising out of and in the course of her employment because the worsening of her bunion condition was not unexpected; claimant, a radiation therapist, was aware of her physical condition and knew which activities would worsen her symptoms, in the course of her treatment, claimant was warned by her doctor that standing on her feet for prolonged periods of time would worsen her bunion condition, and she testified she was aware that the amount of standing in her occupation was hazardous to the condition of her feet, yet she continued to work in a job that required her to stand for long periods of time. Landry v. Carolinas Healthcare Systems (S.C.App. 2011) 396 S.C. 149, 719 S.E.2d 288, rehearing denied. Workers’ Compensation 1544.6(4)

Circuit court did not abuse its discretion in affirming the Appellate Panel of the Workers’ Compensation Commission’s determination that claimant did not suffer a work‑related injury to her lungs, bronchi, and nasal passages; claimant’s claim that she had never suffered from respiratory issues was directly refuted by medical records documenting her respiratory complaints prior to her employment with employer, the medical evidence in the case was conflicting, and physician believed claimant had ulterior motives in pursuing her disability claim against employer and stated her health issues were strictly limited to “simple contact dermatitis.” Brunson v. American Koyo Bearings (S.C.App. 2011) 395 S.C. 450, 718 S.E.2d 755, rehearing denied. Workers’ Compensation 1500; Workers’ Compensation 1509

Evidence was insufficient to establish that workers’ compensation claimant suffered a compensable injury to his neck arising out of and in the course of his employment; claimant testified that he first experienced soreness in his neck after he stopped working for employer, claimant was unable to state how he injured his neck, and physician did not indicate that claimant’s neck injury was caused or aggravated by his employment with employer. McCuen v. BMW Mfg. Corp. (S.C.App. 2009) 383 S.C. 19, 677 S.E.2d 28. Workers’ Compensation 1531.5

Substantial evidence supported Workers’ Compensation Commission’s finding that claimant, a truck driver, sustained a physical brain injury, stroke, and developed a psychological condition in conjunction with an accident arising out of and in the scope of his employment, and thus, his injuries were compensable under the South Carolina Workers’ Compensation Act; following the accident, an emergency room CT scan indicated claimant had a post‑trauma subarachnoid hemorrhage in the right parietal region of his brain, a neurosurgeon assessed claimant and noted a closed head injury with post‑traumatic subarachnoid hemorrhage and probable post‑concussive syndrome, and according to neurologist, claimant’s underlying medical problems were exacerbated by his closed head injury and the confrontation with the workers’ compensation nurse. Hill v. Eagle Motor Lines (S.C. 2007) 373 S.C. 422, 645 S.E.2d 424, rehearing denied. Workers’ Compensation 1529.1(2); Workers’ Compensation 1531.5; Workers’ Compensation 1531.8

Substantial evidence supported Workers’ Compensation Commission’s finding that claimant’s back injury arose out of and in the course of his employment; claimant complained of neck and lower back pain immediately after receiving smaller company car, he testified that his back began hurting him the very first day he drove the subcompact car, doctor opined that claimant needed to be out of the work place because driving exacerbated his lower back pain, and claimant specifically noted his new company car had no lumbar support, was very uncomfortable, and limited his leg movement. Smith v. NCCI, Inc. (S.C.App. 2006) 369 S.C. 236, 631 S.E.2d 268, rehearing denied. Workers’ Compensation 1531.4

Substantial evidence supported finding by the Appellate Panel of the Workers’ Compensation Commission that worker’s compensation claimant aggravated or exacerbated a pre‑existing condition during the course of her employment with second employer; supervisor for claimant’s first employer testified that claimant never complained about problems with her left hand or arm prior to beginning her employment with second employer, prior to starting job with second employer, claimant passed all required tests with no problems and possessed a strong grip in both hands, and claimant testified that she noticed a funny feeling in the fingers on her left hand immediately after finishing her shift for second employer. Hargrove v. Titan Textile Co. (S.C.App. 2004) 360 S.C. 276, 599 S.E.2d 604. Workers’ Compensation 1544.6(4)

Evidence supported finding that claimant committed fraud in filling out her employment application, thereby barring her claim for workers’ compensation benefits; claimant admitted that she lied on the job application and health history by failing to disclose her history of back and leg problems, employer’s human resource manager testified that employer relied on answers in application and would have tried to place claimant in a job that would not have subjected her preexisting condition to further deterioration, and claimant had documented back problems prior to her employment and her back injury while working for employer, establishing causal connection between her false representations and that injury. Jones v. Georgia‑Pacific Corp. (S.C. 2003) 355 S.C. 413, 586 S.E.2d 111. Workers’ Compensation 1598

Evidence supported finding that workers’ compensation claimant sustained hernia injury as a result of his working on a piece of equipment during the course of his employment; treating physician testified claimant suffered an injury resulting in a hernia, claimant testified he was attempting to lift a heavy piece of machinery at work when he immediately felt a sharp pain in his stomach, and other co‑workers verified claimant’s injury. Eaddy v. Smurfit‑Stone Container Corp. (S.C.App. 2003) 355 S.C. 154, 584 S.E.2d 390, rehearing denied. Workers’ Compensation 1531.13(1)

Substantial evidence supported Workers’ Compensation Commission’s finding that claimant failed to meet her burden of proving that she sustained injury by accident or that her back problems arose out of and in the course of her employment; although claimant attempted to tie her injury to one of several events that occurred at work, she told supervisor, co‑worker, and person in charge of filing accident reports that she did not know cause of her pain, she also told insurance adjustor she could not pinpoint cause of her back problems, and while her treating physician did state her injury was aggravated by her work, he never specifically determined her injury was caused by driving forklift at work. Clade v. Champion Laboratories (S.C. 1998) 330 S.C. 8, 496 S.E.2d 856. Workers’ Compensation 1531.4

Substantial evidence supported single commissioner’s finding in workers’ compensation case that claimant’s arm injury was caused by an accident arising out of and in the course of her employment, despite employer/carrier’s contention that claim described a repetitive motion injury which should have been treated as an occupational disease; doctor stated that symptoms could have been caused by a single traumatic event, and claimant testified that she felt pain on particular date when pulling vinyl to make a screen door. Minor v. Philips Products (S.C. 1997) 329 S.C. 321, 494 S.E.2d 819. Workers’ Compensation 1530.3(4); Workers’ Compensation 1531.6

The Workers’ Compensation Commissioner’s finding that an employee did not suffer a compensable injury was supported by (1) a co‑worker’s testimony that he did not recall the alleged accident, and (2) the testimony of 2 other co‑workers that on the morning of the alleged work injury, the employee had claimed to have hurt his back while making love. Fair v. Fluor Daniel (S.C.App. 1992) 309 S.C. 520, 424 S.E.2d 541, rehearing denied, certiorari denied. Workers’ Compensation 573

Substantial evidence supported the decision of the Workers’ Compensation Commission that an employee was injured prior to the date the employer bank merged with another bank where (1) the employee was a vice‑president of the employer bank and he supervised 130 employees and 4 managers, (2) as the result of a merger with another bank his work hours increased from 45 hours to 60 hours per week for 6 months, to 70 hours per week for 4 months, and to 85 hours per week for the month prior to his hospitalization for the breakdown, and (3) his wife and co‑workers testified that he was dysfunctional in the month before the merger. Stokes v. First Nat. Bank (S.C. 1991) 306 S.C. 46, 410 S.E.2d 248.

Substantial evidence supported the application, by the Workers’ Compensation Commission in a proceeding for workers’ compensation death benefits, of the presumption that the unexplained failure to call a material witness under a party’s control raises adverse inferences, where the decedent’s mother testified that the employer told her that the decedent was going to remove the transmission of the car which was found on top of the decedent’s body and the employer, who was the only other person present during this conversation, was not called to rebut her testimony. Davis v. By‑Pass Auto Parts, Inc. (S.C.App. 1991) 304 S.C. 75, 403 S.E.2d 133.

Substantial evidence supported the application, by the Workers’ Compensation Commission in a proceeding for workers’ compensation death benefits, of the presumption that when an employee is found dead at a place where his employment reasonably required him to be, his death arose out of and in the course of the employment, where (1) the employer was in the business of selling used cars and used parts, (2) the decedent and others often removed parts themselves without knowing that only 2 employees were allowed to do so, thereby reasonably believing that they had such authority, (3) the decedent arranged to purchase a transmission for his girlfriend’s car and the employer arranged to have the girlfriend’s car towed to the premises, (4) the employer told the decedent’s mother that the decedent was going to get the transmission, (5) the decedent was last seen heading into the premises during working hours, and (6) the decedent was found dead with a company jack and jack stand, which were usually locked up after hours, beside him. Davis v. By‑Pass Auto Parts, Inc. (S.C.App. 1991) 304 S.C. 75, 403 S.E.2d 133.

The evidence was sufficient to support a finding that the death of an employee, who worked as an outside salesman and was found shot to death in the driveway of a vacant home, arose out of and in the course of employment, even though the case remained unsolved and it was unknown whether the attack on the employee was motivated by personal or work‑related reasons, where the employee was killed during the regular working hours of his employer, his body was found in a residential area within the service jurisdiction of the company in which the company had customers, the body was found a short distance from the company car, and inches away from the body were tools and documents used by the employee in his employment. Suburban Propane Gas Co. v. Deschamps (S.C.App. 1989) 298 S.C. 230, 379 S.E.2d 301.

Circuit Court properly dismissed worker’s compensation claim filed by employee who sustained back injury while working for respondent, where (1) claimant had previously been awarded substantial worker’s compensation benefits for permanent partial disability resulting from back injury sustained while working for former employer, (2) on subsequent job application he knowingly and wilfully made false representation that he had no physical defects or prior injuries, (3) respondent relied upon false representation in hiring claimant, and (4) record, which included claimant’s testimony that same part of back had been point of both injuries and expert medical testimony that claimant’s condition reflected cumulative effect of successive injuries, sustained finding of causal connection between two injuries. Givens v. Steel Structures, Inc. (S.C. 1983) 279 S.C. 12, 301 S.E.2d 545.

Where chain gang guard attacked by prisoners resulting in lacerations and contusions to his head from which he was disabled, and subsequently worked for another employer, but four months thereafter confined in State Hospital where he was confined for over a month and then discharged on trial basis after which he returned to work for a little over two months and then was returned to confinement in State Hospital, a finding that claimant was mentally incompetent and permanently and totally disabled as result of injuries received in original accident arising out of and in course of employment had sufficient evidentiary support. Kennedy v. Williamsburg County (S.C. 1963) 242 S.C. 477, 131 S.E.2d 512.

Where a superintendent for a construction firm was found fatally injured after he had left his home driving his own pick‑up truck for which the firm paid him rental and supplied gas, oil and repairs, the truck contained post hole diggers, twine and blueprints necessary to commence work at a construction site he had been instructed to take charge of that morning and the accident occurred on a highway between his home and a town where the firm had a building supply house where lumber needed at the construction site was to be acquired, there was an abundance of evidence to support the findings of the Commission that his injury and death arose out of and in the course of his employment. Prince v. C. Y. Thomason Co. (S.C. 1960) 236 S.C. 215, 113 S.E.2d 742.

Where claimant testified that while carrying mail he shoved hard to open heavy fire‑protection doors, suffered pain and was found to have collapsed a lung (pneumothorax), there was competent evidence to sustain the finding of the Commission that there was an injury by accident, within the terms of the Compensation Act. Colvin v. E. I. Du Pont De Nemours Co. (S.C. 1955) 227 S.C. 465, 88 S.E.2d 581.

Evidence held insufficient to support finding that claimant’s decedent, a game warden, was drowned while in the discharge of his duty and that his death arose out of and in the course of his employment. Broughton v. South Carolina Game and Fish Dept. (S.C. 1951) 219 S.C. 50, 64 S.E.2d 152.

Sufficient evidence that claimant received an injury which arose out of and in the course of his employment. Schrader v. Monarch Mills (S.C. 1949) 215 S.C. 357, 55 S.E.2d 285. Workers’ Compensation 1586

Award to deceased employee’s father when deceased killed by flash fire caused by his emptying bucket of paint thinner into hot stove while on job, in anger or while drunk, set aside because no substantial evidence that the act was connected with the performance of his duties or incident thereto. Sullivan’s Next of Kin v. Greenville Auto Sales (S.C. 1946) 208 S.C. 68, 36 S.E.2d 801.

Evidence insufficient to show injury and death of employee arose out of his employment. Elrod v. Union Bleachery (S.C. 1944) 204 S.C. 481, 30 S.E.2d 73.

The circumstances surrounding the death of a painter due to lead poisoning were sufficient evidence to affirm the Commission’s award for death caused by accident. Strawhorn v. J.A. Chapman Const. Co. (S.C. 1943) 202 S.C. 43, 24 S.E.2d 116.

46. Review

The basic issue before the Commission, as to whether there was causal connection between the employment of the deceased and the heart attack which resulted in death, was factual and its determination by the Commission is conclusive on appeal if supported by any competent evidence. Greer v Greenville County (1965) 245 SC 442, 141 SE2d 91. Jones v Williamsburg County (1965) 245 SC 434, 141 SE2d 100.

Supreme Court can reverse or modify a decision of the full Workers’ Compensation Commission only if the claimant’s substantial rights have been prejudiced because the decision is affected by an error of law or is not supported by substantial evidence in the record. Whigham v. Jackson Dawson Communications (S.C. 2014) 410 S.C. 131, 763 S.E.2d 420, rehearing denied. Workers’ Compensation 1945; Workers’ Compensation 1946

“Substantial evidence” necessary to support decision of Workers’ Compensation Commission is not a mere scintilla of evidence nor evidence viewed from one side, but such evidence, when the whole record is considered, as would allow reasonable minds to reach the conclusion the full commission reached. Whigham v. Jackson Dawson Communications (S.C. 2014) 410 S.C. 131, 763 S.E.2d 420, rehearing denied. Workers’ Compensation 1413

The Court of Appeals would decline to address workers’ compensation claimant’s remaining issues on appeal from decision of the Appellate Panel of the Workers’ Compensation Commission, as reversal of that decision on the issue of compensability disposed of the appeal. King v. International Knife and Saw‑Florence (S.C.App. 2011) 395 S.C. 437, 718 S.E.2d 227, rehearing denied, certiorari denied. Workers’ Compensation 1912

Worker’s Compensation Commission’s finding establishing a causal relationship between claimant’s physical injuries and her psychological injuries was inadequate in claimant’s action alleging injury as a result of exposure to herbicide, and required remand for a more specific finding of a causal connection. Pack v. State Dept. of Transp. (S.C.App. 2009) 381 S.C. 526, 673 S.E.2d 461. Workers’ Compensation 1529.1(2)

Claimant did not preserve for appellate review issue of whether the full Workers’ Compensation Commission erred in reversing an award for aggravation of preexisting alcoholism, where the trial court’s ruling did not address the issue, and claimant did not move to alter or amend the judgment. Shealy v. Aiken County (S.C. 2000) 341 S.C. 448, 535 S.E.2d 438, rehearing denied. Workers’ Compensation 1846

Evidence as to causal connection between fireman’s exertion at fire and his death from coronary occlusion more than two months later was subject to more than one reasonable inference, and Industrial Commission’s finding of fact that death did not result from accident was not subject to review by courts. Windham v. City of Florence (S.C. 1952) 221 S.C. 350, 70 S.E.2d 553.

**SECTION 42‑1‑170.** “Parent” defined.

The term “parent” includes stepparents and parents by adoption, parents‑in‑law and any person who for more than three years prior to the death of the deceased employee stood in the place of a parent to him, if dependent on the injured employee.

HISTORY: 1962 Code Section 72‑16; 1952 Code Section 72‑16; 1942 Code Section 7035‑2; 1936 (39) 1231.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 107:10, Parents.

**SECTION 42‑1‑172.** Definitions.

(A) “Repetitive trauma injury” means an injury which is gradual in onset and caused by the cumulative effects of repetitive traumatic events. Compensability of a repetitive trauma injury must be determined only under the provisions of this statute.

(B) An injury is not considered a compensable repetitive trauma injury unless a commissioner makes a specific finding of fact by a preponderance of the evidence of a causal connection that is established by medical evidence between the repetitive activities that occurred while the employee was engaged in the regular duties of his employment and the injury.

(C) As used in this section, “medical evidence” means expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed and qualified medical physician.

(D) A “repetitive trauma injury” is considered to arise out of employment only if it is established by medical evidence that there is a direct causal relationship between the condition under which the work is performed and the injury.

(E) Upon reaching maximum medical improvement, the employee may be entitled to benefits pursuant to Section 42‑9‑10, 42‑9‑20, or 42‑9‑30. Medical benefits for compensable repetitive trauma injuries shall be as provided elsewhere in this title.

HISTORY: 2007 Act No. 111, Pt I, Section 7, eff July 1, 2007, applicable to injuries that occur on or after that date.

NOTES OF DECISIONS

In general 1

Admissibility of evidence 3

Maximum medical improvement 2

Sufficiency of evidence 4

1. In general

Requirement under statute governing admissibility of evidence on a workers’ compensation claim for repetitive trauma injury, that expert opinion or testimony be stated to a reasonable degree of medical certainty, is not limited to claimants, but applies also to defendants. Michau v. Georgetown County ex rel. South Carolina Counties Workers Compensation Trust (S.C. 2012) 396 S.C. 589, 723 S.E.2d 805. Workers’ Compensation 1396; Workers’ Compensation 1420

Statutory requirement that expert opinion or testimony be stated to a reasonable degree of medical certainty, in context of workers’ compensation claim for repetitive trauma injury, does not apply to other medical evidence in form of documents, records, or other material. Michau v. Georgetown County ex rel. South Carolina Counties Workers Compensation Trust (S.C. 2012) 396 S.C. 589, 723 S.E.2d 805. Workers’ Compensation 1420

Report from evaluating physician, stating “opinion” that workers’ compensation claimant’s shoulder problems were not related to claimant’s work operating a motor grader, was an expert opinion or testimony that had to be stated to a reasonable degree of medical certainty in context of claim for repetitive trauma injury, and did not constitute “documents, records, or other material” not subject to that heightened standard of admissibility; physician was not claimant’s treating physician, and employer specially sought out physician to evaluate claimant and issue a medical “opinion” to decide compensability of claim. Michau v. Georgetown County ex rel. South Carolina Counties Workers Compensation Trust (S.C. 2012) 396 S.C. 589, 723 S.E.2d 805. Workers’ Compensation 1396; Workers’ Compensation 1420

The Workers’ Compensation Commission erred when it failed to address the statute governing repetitive trauma injuries when it reviewed workers’ compensation claimant’s application for benefits for work‑related injuries that were caused by her repetitious over‑the‑head work for employer. Murphy v. Owens Corning (S.C.App. 2011) 393 S.C. 77, 710 S.E.2d 454. Workers’ Compensation 1814

2. Maximum medical improvement

Claimant was not released to return to work without restrictions until the date on which orthopedic surgeon opined that claimant had reached maximum medical improvement (MMI) and concluded that claimant could return to work with the use of good body mechanics and careful lifting techniques, and therefore employer was required to pay claimant temporary disability benefits from the day after his termination, which was a little more than 15 days after he returned to work with restrictions, until he achieved MMI and was authorized to return to work without restrictions. Cranford v. Hutchinson Const. (S.C.App. 2012) 399 S.C. 65, 731 S.E.2d 303, rehearing denied. Workers’ Compensation 870.4

3. Admissibility of evidence

Admissibility of evidence in workers’ compensation case involving an alleged repetitive trauma injury is governed by statute defining “medical evidence” in context of that type of claim, rather than by threshold standard in Administrative Procedure Act (APA), which requires exclusion of irrelevant, immaterial or unduly repetitious evidence in contested cases. Michau v. Georgetown County ex rel. South Carolina Counties Workers Compensation Trust (S.C. 2012) 396 S.C. 589, 723 S.E.2d 805. Workers’ Compensation 1383; Workers’ Compensation 1384; Workers’ Compensation 1396

4. Sufficiency of evidence

Substantial evidence supported finding that workers’ compensation claimant was entitled to an award of benefits for a repetitive trauma injury; the Workers’ Compensation Commission found that claimant suffered an aggravation of her underlying condition by the repetitive trauma of performing overhead work on her job, and that there was a casual connection between the repetitive activities of claimant’s job and the aggravation of her condition. Murphy v. Owens Corning (S.C.App. 2011) 393 S.C. 77, 710 S.E.2d 454. Workers’ Compensation 1531.7(1)

**SECTION 42‑1‑175.** “Surviving spouse” defined.

The term “surviving spouse” includes only the decedent’s wife or husband living with or dependent for support upon the decedent at the time of the decedent’s death or living apart from the decedent for justifiable cause or by reason of desertion by the decedent at such time.

HISTORY: 1983 Act No. 92 Section 1.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 107:7, Spouse or Cohabitant.

NOTES OF DECISIONS

In general 1

1. In general

Evidence supported finding that putative wife was not involved in a common law marriage with workers’ compensation claimant, and thus did not qualify as a surviving spouse; putative wife did not learn that claimant was not divorced from his first wife when he married her, and thus putative wife did not know of the impediment to marriage and could not recognize it and agree to continue the relationship once it was removed. Thomas v. 5 Star Transp. (S.C.App. 2015) 412 S.C. 1, 770 S.E.2d 183, rehearing denied, certiorari denied. Workers’ Compensation 1474

Absent any indication that employee and woman, who were married before employee obtained a divorce from a second woman and who continued to live together for 11 years after such woman divorced employee, had agreed to enter into a common‑law marriage arrangement subsequent to such divorce, such bigamous marriage had not been converted into a common‑law marriage; thus, a third woman, whom employee married after abandoning his relationship with first woman, was employee’s widow for purposes of being entitled to workmen’s compensation benefits arising from his death. Byers v. Mount Vernon Mills, Inc. (S.C. 1977) 268 S.C. 68, 231 S.E.2d 699.

Wife of deceased employee, who was living apart from employee at time of his death without justifiable cause, could not be deemed his “widow”, within Workmen’s Compensation Act, and hence was not entitled to recover compensation for his death. Young v. Hyman Motors (S.C. 1942) 199 S.C. 233, 19 S.E.2d 109.

In construing section of Workmen’s Compensation Act providing that a widow should be conclusively presumed to be wholly dependent for support upon deceased employee, the section of act defining “widow” as including only deceased’s wife living with or dependent for support upon him at time of his death, or living apart for justifiable cause, or by reason of his desertion at such time, should not be disregarded. Young v. Hyman Motors (S.C. 1942) 199 S.C. 233, 19 S.E.2d 109.

ARTICLE 3

Application and Effect of title

**SECTION 42‑1‑310.** Presumption of acceptance of provisions of title.

Every employer and employee, except as stated in this chapter, shall be presumed to have accepted the provisions of this title respectively to pay and accept compensation for personal injury or death by accident arising out of and in the course of the employment and shall be bound thereby.

HISTORY: 1962 Code Section 72‑101; 1952 Code Section 72‑101; 1942 Code Section 7035‑4; 1936 (39) 1231; 1996 Act No. 424, Section 3, eff June 18, 1996.

Editor’s Note

1996 Act No. 424, Section 13 provides, in part, as follows:

“Section 13. Employers who have filed with the Workers’ Compensation Commission a notice to reject the provisions of Title 42 before the effective date of the 1996 amendment will have until July 1, 1997, to comply with the provisions of the 1996 amendment relating to insuring their workers’ compensation liabilities. Any employer who has rejected the terms of this title prior to approval of the 1996 amendment and has procured another form of employee benefits insurance shall comply, not later than July 1, 1997, with the provisions of the 1996 amendment relating to the insuring of its workers’ compensation liabilities. Furthermore, nothing in the 1996 amendment shall affect or alter any cause of action, right, or claim accruing before the effective date of the 1996 amendment; however, any such cause of action, remedy, or claim accruing before the effective date of the 1996 amendment shall be governed by the law prior to the effective date of the 1996 amendment.”

CROSS REFERENCES

Who is employer of assigned employee under staff leasing services agreement, see Sections 40‑68‑70, 40‑68‑180.

Library References

Workers’ Compensation 1350.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Section 1043.

RESEARCH REFERENCES

ALR Library

4 ALR 5th 585 , Workers’ Compensation: Coverage of Injury Occurring Between Workplace and Parking Lot Provided by Employer, While Employee is Going to or Coming from Work.

96 ALR 3rd 1064 , What Conduct is Willful, Intentional, or Deliberate Within Workmen’s Compensation Act Provision Authorizing Tort Action for Such Conduct.

Attorney General’s Opinions

Clients of the Vocational Rehabilitation Facility who are injured while on non‑paying job tryouts with local businesses would probably be eligible for Workmen’s Compensation coverage under that of businesses affording the tryouts, assuming the businesses themselves were subject to the Workmen’s Compensation Act. 1974‑75 Op.Atty.Gen., No. 4166, p 227, 1975 WL 22461.

NOTES OF DECISIONS

In general 1

Course of employment 2

Traveling to and from work 3

1. In general

Employee’s claim to recover for emotional distress against municipal employer under South Carolina law for job‑related personal injuries was not intentional tort, and thus it was not outside exclusivity provision of South Carolina Workers’ Compensation Act, and, consequently, it was precluded. Cornelius v. City of Columbia, 2009, 663 F.Supp.2d 471, affirmed 399 Fed.Appx. 853, 2010 WL 4366846. Workers’ Compensation 2093

South Carolina Worker’s Compensation Act preempted former employee’s claims against employer for intentional infliction of emotional distress and negligent supervision/retention based on her alleged sexual harassment by her co‑workers. Lasher v. Day & Zimmerman Intern., Inc., 2007, 516 F.Supp.2d 565. Workers’ Compensation 2084; Workers’ Compensation 2093

A compensation act that is compulsory or that has been accepted by both employer and employee excludes other remedies only when conditions existing in a particular case have brought it within the terms of the Workmen’s Compensation Act. The mere fact that the employer and employee are subject to the Act does not deprive them of their common‑law remedies if conditions in the case place it outside the scope of the Act, as, for example, where the injury suffered was not caused by an accident, or did not result in disability. Ritter v. Allied Chemical Corp. (D.C.S.C. 1968) 295 F.Supp. 1360, affirmed 407 F.2d 403.

If an employer has as many as fifteen employees regularly employed, and is not exempt, the Act is presumed to apply. Bean v. Piedmont Interstate Fair Ass’n, 1954, 124 F.Supp. 385, reversed 222 F.2d 227. Workers’ Compensation 200

It requires an affirmative act on the part of automatically covered employers to reject the Act in order to make it inapplicable to them. Bean v. Piedmont Interstate Fair Ass’n, 1954, 124 F.Supp. 385, reversed 222 F.2d 227.

No affirmative step is required by an automatically covered employer to bring it under the Act. Bean v. Piedmont Interstate Fair Ass’n, 1954, 124 F.Supp. 385, reversed 222 F.2d 227.

In determining whether a work‑related injury is compensable, the Workers’ Compensation Act is liberally construed toward providing coverage, and any reasonable doubt as to the construction of the Act will be resolved in favor of coverage. Davaut v. University of South Carolina (S.C. 2016) 418 S.C. 627, 795 S.E.2d 678, rehearing denied. Workers’ Compensation 51; Workers’ Compensation 52

Pursuant to Sections 42‑1‑310 and 42‑9‑390, a worker’s compensation claimant could unilaterally repudiate an offer of settlement that had been accepted by his counsel prior to approval by the South Carolina Industrial Commission, even though a Commission rule requires approval of settlement agreements involving claimants represented by legal counsel without judicial proceedings, where the closing papers reflecting the agreement of the parties had been prepared but not signed, and thus represented no more than a settlement proposal. Mackey v. Kerr‑McGee Chemical Co. (S.C.App. 1984) 280 S.C. 265, 312 S.E.2d 565.

The basic purpose of the Workmen’s Compensation Act is the inclusion of employers and employees, and not their exclusion; and doubts of jurisdiction must be resolved in favor of inclusion rather than exclusion. Adams v. Davison‑Paxon Co. (S.C. 1957) 230 S.C. 532, 96 S.E.2d 566.

If an employer is within the Act to bear its liabilities, he must remain to be accorded its immunities, in the absence of a clearly expressed legislative intention to the contrary. Adams v. Davison‑Paxon Co. (S.C. 1957) 230 S.C. 532, 96 S.E.2d 566. Workers’ Compensation 2084

In view of the fact that the acceptance of the Workmen’s Compensation Act depends upon consent, express or implied, the employer may waive the provisions of the Act, if he should see fit to do so, in an employee’s action for injuries. Googe v. Speaks (S.C. 1940) 194 S.C. 206, 9 S.E.2d 439. Workers’ Compensation 394; Workers’ Compensation 2098

Where an employer relies upon the Compensation Act in defense, or upon a defense which the Compensation Act has taken away from those not electing to come within it, the burden of pleading the election to come within, that he is a subscriber under, or that he has complied with, the Act is upon the employer; where defendant is required to plead contributory negligence as a defense, an employer must plead that he is not within a compensation act depriving certain employers of that defense. Googe v. Speaks (S.C. 1940) 194 S.C. 206, 9 S.E.2d 439. Workers’ Compensation 2129

The enactment of the Workmen’s Compensation Act did not deprive the court of common pleas of jurisdiction of actions relating to master and servant, because unless the terms of that Act are accepted, either expressly or impliedly, by the master and the servant, the common law remains applicable. Hence, where a defendant contends that the Workmen’s Compensation Act is applicable, the duty is upon it to set it up by way of special defense. Googe v. Speaks (S.C. 1940) 194 S.C. 206, 9 S.E.2d 439. Workers’ Compensation 2098

2. Course of employment

An injury occurs “in the course of” employment, for purposes of workers’ compensation, when it occurs within the period of employment at a place where the employee reasonably may be in the performance of his duties and while fulfilling those duties or engaged in something incidental thereto. Davaut v. University of South Carolina (S.C. 2016) 418 S.C. 627, 795 S.E.2d 678, rehearing denied. Workers’ Compensation 617

Within the statute providing that workers’ compensation pays an employee benefits for damages resulting from personal injury or death by accident arising out of and in the course of the employment, the term “in the course of” refers to the time, place, and circumstances under which the accident occurred. Davaut v. University of South Carolina (S.C. 2016) 418 S.C. 627, 795 S.E.2d 678, rehearing denied. Workers’ Compensation 615

Within the statute providing that workers’ compensation pays an employee benefits for damages resulting from personal injury or death by accident arising out of and in the course of the employment, the term “arising out of” refers to the origin of the cause of the accident. Davaut v. University of South Carolina (S.C. 2016) 418 S.C. 627, 795 S.E.2d 678, rehearing denied. Workers’ Compensation 608

Determining whether an injury occurs in the course of employment for workers’ compensation purposes remains an inherently fact‑specific inquiry. Davaut v. University of South Carolina (S.C. 2016) 418 S.C. 627, 795 S.E.2d 678, rehearing denied. Workers’ Compensation 750

3. Traveling to and from work

Employee who was injured while leaving employer’s premises by traveling direct route from premises to her car, which was in parking lot provided for employee parking, was entitled to workers’ compensation benefits, even though she was injured while crossing street that was not owned by employer. Davaut v. University of South Carolina (S.C. 2016) 418 S.C. 627, 795 S.E.2d 678, rehearing denied. Workers’ Compensation 1719

Employees who must cross a public way that bisects an employer’s premises, and who are injured on that public way while traveling a direct route between an employer’s facility and parking lot, are entitled to workers’ compensation benefits. Davaut v. University of South Carolina (S.C. 2016) 418 S.C. 627, 795 S.E.2d 678, rehearing denied. Workers’ Compensation 750

Although an employee’s injuries are incurred away from the employer’s premises, the place of injury, for purposes of workers’ compensation, may be brought within the scope of employment by an express or implied requirement in the contract of employment of its use by the employee in going to and coming from his work. Davaut v. University of South Carolina (S.C. 2016) 418 S.C. 627, 795 S.E.2d 678, rehearing denied. Workers’ Compensation 729

The general rule is that an injury sustained by an employee away from the employer’s premises while on his way to or from work does not arise out of and “in the course of” employment for purposes of workers’ compensation. Davaut v. University of South Carolina (S.C. 2016) 418 S.C. 627, 795 S.E.2d 678, rehearing denied. Workers’ Compensation 719

The act of leaving the employer’s premises is “in the course of” one’s employment, for purposes of workers’ compensation, if the employee leaves the premises as contemplated at the close of the work day. Davaut v. University of South Carolina (S.C. 2016) 418 S.C. 627, 795 S.E.2d 678, rehearing denied. Workers’ Compensation 706

**SECTION 42‑1‑315.** Applicability of title respecting work‑related injuries to program participants.

The provisions of this title apply to and include all participants in the Tech Prep or other structured school to work programs, whether compensated or not, for injuries by accident arising out of and in the course of their employment with a sponsoring employer.

HISTORY: 1996 Act No. 259, Section 1, eff April 1, 1996.

Library References

Workers’ Compensation 1344.

Westlaw Topic No. 413.

**SECTION 42‑1‑320.** Applicability to public entities and their employees.

The State, its municipal corporations and political subdivisions thereof, and the employees of the State or its municipal corporations and political subdivisions are subject to this title.

HISTORY: 1962 Code Section 72‑102; 1952 Code Section 72‑102; 1942 Code Section 7035‑8; 1936 (39) 1231; 1937 (40) 613; 1996 Act No. 424, Section 4, eff June 18, 1996.

Editor’s Note

1996 Act No. 424, Section 13, provides, in part, as follows: “Employers who have filed with the Workers’ Compensation Commission a notice to reject the provisions of Title 42 before the effective date of the 1996 amendment will have until July 1, 1997, to comply with the provisions of the 1996 amendment relating to insuring their workers’ compensation liabilities. Any employer who has rejected the terms of this title prior to approval of the 1996 amendment and has procured another form of employee benefits insurance shall comply, not later than July 1, 1997, with the provisions of the 1996 amendment relating to the insuring of its workers’ compensation liabilities. Furthermore, nothing in the 1996 amendment shall affect or alter any cause of action, right, or claim accruing before the effective date of the 1996 amendment; however, any such cause of action, remedy, or claim accruing before the effective date of the 1996 amendment shall be governed by the law prior to the effective date of the 1996 amendment.”

CROSS REFERENCES

Appointment of reserve police officers, see Section 23‑28‑10 et seq.

Coverage of personnel employed by municipality to work for joint agency pursuant to Joint Municipal Electric Power and Energy Act, see Section 6‑23‑10 et seq.

Reserves being provided workmen’s compensation benefits, see Section 23‑28‑110.

Library References

Workers’ Compensation 374 to 385.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 263 to 269.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 101:4, Public Employers.

NOTES OF DECISIONS

In general 1

1. In general

Since it is employment relationship which gives rise to liability for and right to compensation, where prisoner entered into private contract of hire with employee and was indistinguishable from any other employee, prisoner transcended his status and became private employee entitled to workmen’s compensation benefits. Hamilton v. Daniel Intern. Corp. (S.C. 1979) 273 S.C. 409, 257 S.E.2d 157.

Considering this section [Code 1962 Section 72‑102] and Code 1962 Section 72‑13 in conjunction, the one with the other, it is apparent that legislature intended to set up two classes of employers: (1) the State and all political subdivisions thereof, including quasi‑public corporations; (2) all private employment in which fifteen or more regular employees are employed. In the latter class employers and employees are given the express right to elect whether or not they shall come under the provisions of the Workmen’s Compensation Act, but no such right is given those falling within the first group. Black v. Town of Springfield (S.C. 1950) 217 S.C. 413, 60 S.E.2d 854.

Where obligations arise on the part of municipalities under this Title, they are to be met by the proceeds of the sources of income provided for municipalities by other legislation. Brown v. Town of Patrick (S.C. 1943) 202 S.C. 236, 24 S.E.2d 365.

**SECTION 42‑1‑360.** Exemption of casual employees and certain other employments.

This title does not apply to:

(1) a casual employee, as defined in Section 42‑1‑130;

(2) any person who has regularly employed in service less than four employees in the same business within the State or who had a total annual payroll during the previous calendar year of less than three thousand dollars regardless of the number of persons employed during that period;

(3) a state and county fair association, unless the employer voluntarily elects to be bound by this title, as provided by Section 42‑1‑380;

(4) an agricultural employee, unless the agricultural employer voluntarily elects to be bound by this title, as provided by Section 42‑1‑380;

(5) a railroad, railroad employee, railway express company, or railway express company employee; nor may this title be construed to repeal, amend, alter, or affect in any way the laws of this State relating to the liability of a railroad or railway express company for an injury to a respective employee;

(6) a person engaged in selling any agricultural product for a producer of them on commission or for other compensation, paid by a producer, when the product is prepared for sale by the producer;

(7) a licensed real estate sales person engaged in the sale, leasing, or rental of real estate for a licensed real estate broker on a straight commission basis and who has signed a valid independent contractor agreement with the broker;

(8) a federal employee in this State;

(9) an individual who owns or holds under a bona fide lease‑purchase or installment‑purchase agreement a tractor trailer, tractor, or other vehicle, referred to as “vehicle”, and who, under a valid independent contractor contract provides that vehicle and the individual’s services as a driver to a motor carrier. For purposes of this item, any lease‑purchase or installment‑purchase of the vehicle may not be between the individual and the motor carrier referenced in this title, but it may be between the individual and an affiliate, subsidiary, or related entity or person of the motor carrier, or any other lessor or seller. Where the lease‑purchase or installment‑purchase is between the individual and an affiliate, subsidiary, or related entity or person of the motor carrier, or any other lessor or seller, the vehicle acquisition or financing transaction must be on terms equal to terms available in customary and usual retail transactions generally available in the State. This individual is considered an independent contractor and not an employee of the motor carrier under this title. The individual and the motor carrier to whom the individual contracts or leases the vehicle mutually may agree that the individual or workers, or both, is covered under the motor carrier’s workers’ compensation policy or authorized self‑insurance if the individual agrees to pay the contract amounts requested by the motor carrier. Under any such agreement, the independent contractor or workers, or both, must be considered an employee of the motor carrier only for the purposes of this title and for no other purposes.

HISTORY: 1962 Code Section 72‑107; 1952 Code Section 72‑107; 1942 Code Section 7035‑16; 1936 (39) 1231; 1937 (40) 153, 613; 1939 (41) 323; 1961 (52) 412; 1972 (57) 2339, 3073; 1974 (58) 2265; 2007 Act No. 111, Pt I, Section 8, eff July 1, 2007, applicable to injuries that occur on or after that date.

CROSS REFERENCES

“Employees” includes both assigned and non‑assigned employees within meaning of staff leasing services arrangement, see Section 40‑68‑75.

Library References

Workers’ Compensation 263 to 277.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 179 to 181.

RESEARCH REFERENCES

ALR Library

40 ALR 6th 99 , Validity, Construction, and Application of Statutory Provisions Exempting or Otherwise Restricting Farm and Agricultural Workers from Worker’s Compensation Coverage.

Treatises and Practice Aids

Modern Workers’ Compensation Section 105:7, Minimum Payroll.

Modern Workers’ Compensation Section 105:15, Nonprofit Organizations.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law, workers’ compensation law. 41 S.C. L. Rev. 231 (Autumn 1989).

Employer‑Employee Relationship. 25 S.C. L. Rev. 510.

Attorney General’s Opinions

Employees on a dairy farm producing raw milk for sale to a commercial dairy are within the agricultural exemption for coverage under the Workmen’s Compensation Act. 1974‑75 Op.Atty.Gen., No 4174, p 231, 1975 WL 22469.

A person deputized for an immediate emergency situation, and not as a continuing act of employment, would be classified as a casual employee. 1962‑63 Op.Atty.Gen., No. 1569 p 138, 1963 WL 8319.

NOTES OF DECISIONS

In general 1

Agricultural employees excepted 8

Casual employees 4

Constitutional issues 3

Construction with other laws 2

County fairs and charitable institutions 7

Minimum number of employees 5

Minimum payroll 6

Review 10

Sufficiency of evidence 9

1. In general

Under this section [Code 1962 Section 72‑107] and Code 1962 Section 72‑109 it is obvious that the legislature intended to allow both the exempted employer and employee to come in under the terms of the Act. To hold that the employer may elect, but that the employee cannot, would be to defeat the manifest intention of the legislature. Ham v Mullins Lumber Co. (1940) 193 SC 66, 7 SE2d 712. White v J. T. Strahan Co. (1964) 244 SC 120, 135 SE2d 720.

In determining relevant time period for ascertaining whether employer regularly employed four or more employees with some constancy, so as to be subject to Workers’ Compensation Act, Workers’ Compensation Commission should consider (1) employer’s established mode of operation; (2) whether employer generally employs jurisdictional number at any time during his operation, and (3) period during which employment is definite and recurrent rather than occasional, sporadic, or indefinite. Ferguson v. New Hampshire Ins. Co. (S.C.App. 2015) 412 S.C. 203, 771 S.E.2d 851, rehearing denied, certiorari denied. Workers’ Compensation 200

Test in determining if agents classed as employees or independent contractors and thereby exempt from provisions of this Act is one of control, principal factors of which are (1) direct evidence of right or exercise of control (2) method of payment, (3) furnishing of equipment, and (4) right to fire, and such factors being shown, circuit judge’s order affirming order of Commission holding insurance company subject to Act was affirmed. South Carolina Indus. Commission v. Progressive Life Ins. Co. (S.C. 1963) 242 S.C. 547, 131 S.E.2d 694.

Where no package containers are actually manufactured at the place of business operated by subsidiary corporation, but subsidiary is engaged solely in cutting rotary veneer, and that such veneer is sold principally to the parent corporation and the corporations act distinct and separately, such subsidiary corporation could not escape liability under this section [Code 1962 Section 72‑107]. Gordon v. Hollywood‑Beaufort Package Corp. (S.C. 1948) 213 S.C. 438, 49 S.E.2d 718.

This section [Code 1962 Section 72‑107] evidences no purpose to exclude departments of an employer’s business so as to exclude all who are engaged in the excluded business. This does not necessarily mean that all employees are covered by the Act for the reason that some employees of the same person or corporation may be engaged in a completely disassociated enterprise. Hopkins v. Darlington Veneer Co. (S.C. 1946) 208 S.C. 307, 38 S.E.2d 4.

2. Construction with other laws

Section 42‑15‑10 does not override clear and unambiguous provisions of Section 42‑1‑360(2), as Section 42‑15‑10 conditions right of employee to file claim under Workers’ Compensation Act of this state on employee being covered in first instance by state’s Workers’ Compensation Act. Nolan v. National Sales Co., Inc. (S.C.App. 1987) 292 S.C. 1, 354 S.E.2d 575, affirmed 294 S.C. 371, 364 S.E.2d 752.

3. Constitutional issues

The Migrant and Seasonal Agricultural Worker Protection Act (AWPA) (29 USCA Sections 1801 et seq.) ‑ which contains a provision (29 USCA Section 1854) authorizing a private right of action for any person aggrieved by an agricultural employer’s violation of the AWPA ‑ preempts state law to the limited extent that it does not permit states to supplant, rather than supplement, the AWPA’s remedial scheme. Adams Fruit Co., Inc. v. Barrett, U.S.Fla.1990, 110 S.Ct. 1384, 494 U.S. 638, 108 L.Ed.2d 585.

The private right of action available, under the enforcement provisions of the Migrant and Seasonal Agricultural Worker Protection Act (AWPA) (29 USCA Section 1854), to any person aggrieved by an agricultural employer’s violation of the AWPA (29 USCA Sections 1801 et seq.) is unaffected by the availability of remedies under state workers’ compensation law. Adams Fruit Co., Inc. v. Barrett, U.S.Fla.1990, 110 S.Ct. 1384, 494 U.S. 638, 108 L.Ed.2d 585.

When migrant agricultural worker is injured on job and his injury is covered by state workers’ compensation law worker is bound by its provisions, and cannot maintain action under Migrant and Seasonal Agricultural Worker Protection Act (29 USCA Sections 1801 et seq.). Roman v. Sunny Slope Farms, Inc. (C.A.4 (S.C.) 1987) 817 F.2d 1116, certiorari denied 108 S.Ct. 163, 484 U.S. 855, 98 L.Ed.2d 117. Workers’ Compensation 2084

4. Casual employees

This section [Code 1962 Section 72‑107] and Code 1962 Section 72‑11 are not in conflict as to casual employees. They both exclude them from the Act. Jolly v Atlantic Greyhound Corp. (1945) 207 SC 1, 35 SE2d 42. De Berry v Coker Freight Lines (1959) 234 SC 304, 108 SE2d 114.

“Casual employees” are not covered by workmen’s compensation act; employment is “casual” only where employment contract is limited to brief, isolated incident; where manufacturer contracts with company for repair of electrical circuits, electrical contracting company’s employee cannot divorce himself from electrical contracting company’s continuing relationship with manufacturer, and injured electrician is not casual employee. Singleton v. J.P. Stevens & Co., Inc. (C.A.4 (S.C.) 1984) 726 F.2d 1011.

Employee doing something for subcontractor which bore some reasonably direct relation to performance of work undertaken by contractor not a casual employee and comes within coverage of this Title. MacMullen v. South Carolina Elec. & Gas Co. (C.A.4 (S.C.) 1963) 312 F.2d 662, certiorari denied 83 S.Ct. 1302, 373 U.S. 912, 10 L.Ed.2d 413.

The word “casual,” as used in this section [Code 1962 Section 72‑107], subsec. (1), should be construed in the light of the definition of “employee” in Code 1962 Section 72‑11 and also in the light of the broad provisions of Code 1962 Sections 72‑11 to 72‑116. Berry v. Atlantic Greyhound Lines, 1940, 114 F.2d 255.

Where the work being performed by an employee of a subcontractor was part of the trade, business, profession or occupation of owner, it is not necessary to consider whether employee’s employment was casual since for an employee to be excluded under the act, his employment must be both casual and not in the trade, business, profession or occupation of his employer. Carrier v. Westvaco Corp., 1992, 806 F.Supp. 1242, affirmed 46 F.3d 1122.

For casual employee to be excluded from coverage of Workmen’s Compensation Law as provided under Section 42‑1‑130, work being done by employee must be both casual and not in trade, business, profession or occupation of employer; thus, truck driver who was injured while waiting for his truck to be loaded at manufacturer’s plant was not subject to exclusion as casual employee, where work being performed by driver was part of the trade, business, profession or occupation of employer, and where driver’s employment through carrier regularly used by manufacturer was arguably more than strictly chance employment. Carrier v. Westvaco Corp., 1992, 806 F.Supp. 1242, affirmed 46 F.3d 1122.

Where employment cannot be characterized as permanent or periodically regular, but occurs by chance, or with the intention and understanding on the part of both employer and employee that it shall not be continuous, it is casual for purposes of determining if employer has at least four employees so as to be subject to Workers’ Compensation Act. Ferguson v. New Hampshire Ins. Co. (S.C.App. 2015) 412 S.C. 203, 771 S.E.2d 851, rehearing denied, certiorari denied. Workers’ Compensation 263

Where employment cannot be characterized as permanent or periodically regular, but occurs by chance, or with the intention and understanding on the part of both employer and employee that it shall not be continuous, it is “casual” for purposes of statute providing that Workers’ Compensation Act shall not apply to casual employees. Hernandez‑Zuniga v. Tickle (S.C.App. 2007) 374 S.C. 235, 647 S.E.2d 691. Workers’ Compensation 263

In determining whether an employee is a casual employee and therefore excluded form coverage under the Workers’ Compensation Act, Section 42‑1‑400 et seq., the court must consider whether (1) the employee’s work for the employer was casual, and (2) the employee was performing work for the employer that was not in the course of the employer’s trade, business, profession or occupation. Riden v. Kemet Electronics Corp. (S.C.App. 1993) 313 S.C. 261, 437 S.E.2d 156.

An employee will be excluded from receiving workers’ compensation benefits pursuant to Section 42‑1‑130 only if his work was casual and not in the course of the employer’s business. Riden v. Kemet Electronics Corp. (S.C.App. 1993) 313 S.C. 261, 437 S.E.2d 156.

Where worker sought benefits under Workmen’s Compensation Act, but owned his own equipment and did private contract work, and his practice was to submit bids for jobs and if accepted, to do the work himself, and was employed for a brief period by state commission with the intention and understanding that he would be a substitute for portions of 2 days, the employment of the claimant was at best casual employment and he was excluded from coverage under the Act. Privette v. South Carolina State Forestry Commission (S.C. 1975) 265 S.C. 117, 217 S.E.2d 25.

The exclusion of casual employees applies to all sections of this Title. Benbow v. Edmunds High School (S.C. 1951) 220 S.C. 363, 67 S.E.2d 680.

5. Minimum number of employees

Employment of the same number of persons, as a common characteristic of regular employment under the Workers’ Compensation Act, establishes a minimum number of employees, depending upon the facts at hand; this language does not preclude a finding of regularity if, at some point during the relevant time period, an employer employs more than “the same number” of persons. Hartzell v. Palmetto Collision, LLC (S.C.App. 2013) 406 S.C. 233, 750 S.E.2d 97, rehearing denied, certiorari granted, reversed 415 S.C. 617, 785 S.E.2d 194, on remand 419 S.C. 87, 796 S.E.2d 145. Workers’ Compensation 200

Phrase “regularly employed” means employment of the same number of persons with some constancy throughout a relevant time period for purposes of statute providing that Workers’ Compensation Act shall not apply to any person who has “regularly employed” in service less than four employees in the same business within the State. Hernandez‑Zuniga v. Tickle (S.C.App. 2007) 374 S.C. 235, 647 S.E.2d 691. Workers’ Compensation 200

The relevant time period for determining whether employer has consistently employed at least four employees so as to be subject to Workers’ Compensation Act, should be identified by considering: (1) the employer’s established mode of operation; (2) whether the employer generally employs the jurisdictional number at any time during his operation; and (3) the period during which employment is definite and recurrent rather than occasional, sporadic, or indefinite. Hernandez‑Zuniga v. Tickle (S.C.App. 2007) 374 S.C. 235, 647 S.E.2d 691. Workers’ Compensation 200

Employer did not regularly employ at least four workers with some constancy during the relevant period so as to be subject to Workers’ Compensation Act; although claimant and another worker were employees and they were regularly employed during the relevant period, employer disclaimed any knowledge that a third individual worked on any of the painting projects, and employer’s client never observed more than three workers painting her house. Hernandez‑Zuniga v. Tickle (S.C.App. 2007) 374 S.C. 235, 647 S.E.2d 691. Workers’ Compensation 200

The relevant time period for ascertaining whether employer regularly employed four or more employees with some constancy, so as to be subject to Workers’ Compensation Act, began when claimant started working for employer, and the period terminated shortly after claimant’s injury, when employer ceased operating until he officially opened his business. Hernandez‑Zuniga v. Tickle (S.C.App. 2007) 374 S.C. 235, 647 S.E.2d 691. Workers’ Compensation 200

The employer’s established mode or plan of operation dictates, to a large extent, the relevant time period, and both duration and regularity of occurrence are important factors when determining if employer has at least four employees so as to be subject to Workers’ Compensation Act. Hernandez‑Zuniga v. Tickle (S.C.App. 2007) 374 S.C. 235, 647 S.E.2d 691. Workers’ Compensation 200

Under the facts and circumstances of workers’ compensation claimant’s case, employer regularly employed more than four employees in the same business in South Carolina at the time of claimant’s accident, and thus, employer was not exempt from jurisdiction under the Workers’ Compensation Act; according to South Carolina Employment Security Commission reports, employer had more than four employees in South Carolina during each fiscal quarter of 2001 and the first quarter of 2002, employer also filed income taxes with the South Carolina Department of Revenue for South Carolina employees, and employer’s out‑of‑state drivers were not permitted to exercise an election to file their income tax withholding or unemployment security benefits with the State of Alabama. Hill v. Eagle Motor Lines (S.C. 2007) 373 S.C. 422, 645 S.E.2d 424, rehearing denied. Workers’ Compensation 197

Issue of whether employer regularly employs requisite number of employees to be subject to Workers’ Compensation Act is jurisdictional. Harding v. Plumley (S.C.App. 1998) 329 S.C. 580, 496 S.E.2d 29. Workers’ Compensation 197

Construction company with two employees paid on a consistent basis by employer did not “regularly employ” four employees as required to be subject to Workers’ Compensation Act, despite fact that employer occasionally hired two employees for footing and roofing subcontractors, where footing subcontractor was only paid twice during relevant period and roofer was paid only once. Harding v. Plumley (S.C.App. 1998) 329 S.C. 580, 496 S.E.2d 29. Workers’ Compensation 200

The daughter of an employer was not an employee for purposes of Section 42‑1‑360, and thus the employer did not regularly employ 4 persons at the time of the accident, where the daughter was helping her father because he was “in a bad financial bind” and he had helped her in the past, she neither received nor expect to receive any kind of pay, and there was no evidence that the employer had any right of control over her. Kirksey v. Assurance Tire Co. (S.C.App. 1993) 311 S.C. 255, 428 S.E.2d 721, rehearing denied, certiorari granted, affirmed 314 S.C. 43, 443 S.E.2d 803. Workers’ Compensation 238

Even if a claimant and his construction crew were hired in South Carolina when the claimant was telephoned in South Carolina from another state with an offer to hire the claimant and 5 of his crew members to work in another state, the employer did not regularly employ 4 or more employees in South Carolina so as to come within the Workers’ Compensation Act where the employer maintained no offices in South Carolina, was not licensed to do business in South Carolina and had never performed construction work in South Carolina. Deanhardt v. Neal C. Deanhardt Masonry Contractors (S.C.App. 1989) 298 S.C. 244, 379 S.E.2d 726.

A corporate employer’s “statutory employees,” whose status as statutory employees resulted from their employment by the corporate employer’s sister corporation, could be included to satisfy the enumerated 4‑person jurisdictional requirement of Section 42‑1‑360(2). Ost v. Integrated Products, Inc. (S.C. 1988) 296 S.C. 241, 371 S.E.2d 796. Workers’ Compensation 198

South Carolina Workers’ Compensation Act requires company have at least four employees in South Carolina for inclusion; argument that company’s out‑of‑state employees should also be counted when determining number of employees for exemption purposes was rejected. Nolan v. National Sales Co., Inc. (S.C. 1988) 294 S.C. 371, 364 S.E.2d 752.

An employer who had only three employees was presumptively excluded from the provisions of the Compensation Act. White v. J. T. Strahan Co. (S.C. 1964) 244 S.C. 120, 135 S.E.2d 720.

Formerly where an employer regularly employed in his services less than fifteen (now six) employees and was engaged in logging and pulpwood operations and work incident thereto that exempted him from the mandatory provisions of the Act. White v. J. T. Strahan Co. (S.C. 1964) 244 S.C. 120, 135 S.E.2d 720.

An employer who had only two employees in South Carolina was presumptively excluded from the provisions of the Workmen’s Compensation Act. Herring v. Lawrence Warehouse Co. (S.C. 1952) 222 S.C. 226, 72 S.E.2d 453.

6. Minimum payroll

Employers who have no payroll in the previous calendar year do not meet the terms of the minimum payroll exemption provision of the Workers’ Compensation Act, under which employers who had an annual payroll in previous year of less than $3,000 are exempt from coverage requirements. Lester v. South Carolina Workers’ Compensation Com’n (S.C. 1999) 334 S.C. 557, 514 S.E.2d 751. Workers’ Compensation 195

Employers are not required to reasonably expect to have a payroll of less than $3,000 during current year in order to claim exemption from Workers’ Compensation Act’s coverage requirements, under provision that exempts employers who had annual payrolls in previous year of less than $3,000. Lester v. South Carolina Workers’ Compensation Com’n (S.C. 1999) 334 S.C. 557, 514 S.E.2d 751. Workers’ Compensation 195

7. County fairs and charitable institutions

The words “county fair association” in subsec. (8) of this section [Code 1962 Section 72‑107] must be given their normal meaning. Bean v. Piedmont Interstate Fair Ass’n (C.A.4 (S.C.) 1955) 222 F.2d 227.

The fact that the control of a corporation lies in its members or stockholders, and not in the state or county authorities, is not decisive as to whether it is a county fair association. Bean v. Piedmont Interstate Fair Ass’n (C.A.4 (S.C.) 1955) 222 F.2d 227.

A fair association was held, on the record, to be a county fair association within the meaning of subsec. (8) of this section [Code 1962 Section 72‑107]. Bean v. Piedmont Interstate Fair Ass’n (C.A.4 (S.C.) 1955) 222 F.2d 227.

If an employer is exempted from the Workmen’s Compensation Act under this section [Code 1962 Section 72‑107] as a county fair association, it is not precluded from making the ordinary common‑law defenses in a suit at common law. Bean v. Piedmont Interstate Fair Ass’n (C.A.4 (S.C.) 1955) 222 F.2d 227.

Charitable institutions are excluded from the Workmen’s Compensation Act by implication. Caughman v. Columbia Y.M.C.A. (S.C. 1948) 212 S.C. 337, 47 S.E.2d 788.

8. Agricultural employees excepted

The nature of the employment of an employee, for purposes of determining whether agricultural exemption from Workers’ Compensation Act applies to employee, must be determined from the whole character of his employment, and coverage is dependent upon the character of the work he is hired to perform, not upon the nature and scope of the employer’s business. Simons v. Longbranch Farms, Inc. (S.C.App. 2001) 345 S.C. 277, 547 S.E.2d 500, rehearing denied, certiorari granted. Workers’ Compensation 166

Only when the character of the employee’s work is ambiguous, for purposes of determining whether agricultural exemption in Workers’ Compensation Act applies, are the scales tipped by the nature of the employer’s business. Simons v. Longbranch Farms, Inc. (S.C.App. 2001) 345 S.C. 277, 547 S.E.2d 500, rehearing denied, certiorari granted. Workers’ Compensation 166

Minor was “agricultural employee,” exempt from coverage by Workers’ Compensation Act, and thus Act’s exclusivity did not bar wrongful‑death and survival action brought by minor’s father against corporation that operated farm where minor was killed, although corporation was produce wholesaler also engaged in non‑farm activities, where minor’s activities for corporation included feeding cattle, cleaning stalls, and performing whatever chores needed to be done on farm. Simons v. Longbranch Farms, Inc. (S.C.App. 2001) 345 S.C. 277, 547 S.E.2d 500, rehearing denied, certiorari granted. Workers’ Compensation 166

9. Sufficiency of evidence

Evidence was insufficient to support local mover’s claim that moving business employed four or more employees during relevant period, so as to be subject to Workers’ Compensation Act; owner of moving business testified that he “pretty much operated myself,” and that at any given time, the most people doing a job were himself and three helpers. Ferguson v. New Hampshire Ins. Co. (S.C.App. 2015) 412 S.C. 203, 771 S.E.2d 851, rehearing denied, certiorari denied. Workers’ Compensation 1431

A preponderance of the evidence supported a finding that employer regularly employed at least four persons, and thus, the Workers’ Compensation Commission’s Appellate Panel had jurisdiction over employer under the Workers’ Compensation Act; the record contained evidence concerning employer’s employees over a three year period, claimant’s testimony indicated at least four people were working for employer at the time of claimant’s injury, and the evidence indicated these four individuals worked for employer with some constancy and not by chance or for a particular occasion. Hartzell v. Palmetto Collision, LLC (S.C.App. 2013) 406 S.C. 233, 750 S.E.2d 97, rehearing denied, certiorari granted, reversed 415 S.C. 617, 785 S.E.2d 194, on remand 419 S.C. 87, 796 S.E.2d 145. Workers’ Compensation 1431

10. Review

Without evidence describing the work that individuals performed, appellate court could not determine whether they were employer’s statutory employees and whether they could count toward the 4 employee jurisdictional minimum so as to subject employer to Workers’ Compensation Act. Hernandez‑Zuniga v. Tickle (S.C.App. 2007) 374 S.C. 235, 647 S.E.2d 691. Workers’ Compensation 1752

When reviewing whether employer regularly employs requisite number of employees to be subject to Workers’ Compensation Act, appellate court should review record and decide issue in accordance with its view of preponderance of the evidence, rather than applying substantial evidence standard of review. Harding v. Plumley (S.C.App. 1998) 329 S.C. 580, 496 S.E.2d 29. Workers’ Compensation 1939.11(3)

Workers’ Compensation Commission’s findings of fact relative to whether employer regularly employs requisite number of employees to be subject to Workers’ Compensation Act is not conclusive on appeal, and appellate court has power and duty to review record and decide issue in accordance with preponderance of evidence. Harding v. Plumley (S.C.App. 1998) 329 S.C. 580, 496 S.E.2d 29. Workers’ Compensation 1939.11(3)

**SECTION 42‑1‑380.** Waiver of exemption by employer.

Any person employing employees in the State and exempted from the mandatory provisions of this title may come in under the terms of this title and receive the benefits and be subject to the liabilities of this title by filing with the commission a written notice of his desire to be subject to the terms and provisions of this title. Any such person shall come under the provisions of this title and be affected thereby thirty days after the date of such notice.

HISTORY: 1962 Code Section 72‑109; 1952 Code Section 72‑109; 1942 Code Section 7035‑5; 1936 (39) 1231.

CROSS REFERENCES

When provisions of this title are inadmissible in a trial, see Section 42‑1‑630.

Library References

Workers’ Compensation 393.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 276 to 279.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 101:2, Exempt Employers.

Modern Workers’ Compensation Section 101:21, Election by Notice to Public Body or Official.

NOTES OF DECISIONS

In general 1

Effect of election 3

Notice 2

1. In general

Under this section [Code 1962 Section 72‑109] and Code 1962 Section 72‑107 it is obvious that the legislature intended to allow both the exempted employer and employee to come in under the terms of the Act. To hold that the employer may elect, but that the employee cannot, would be to defeat the manifest intention of the legislature. Ham v Mullins Lumber Co. (1940) 193 SC 66, 7 SE2d 712. White v J. T. Strahan Co. (1964) 244 SC 120, 135 SE2d 720.

Substantial compliance with this section is sufficient to bring an exempt employer within the terms of the Compensation Law. Dependents of Sweeney v Cape Fear Wood Corp. (1961) 237 SC 471, 118 SE2d 70. Yeomans v Anheuser‑Busch, Inc. (1941) 198 SC 65, 15 SE2d 833, 136 ALR 894. White v J. T. Strahan Co. (1964) 244 SC 120, 135 SE2d 720.

Where employer attempts to obtain compensation insurance but does not file anything with the Commission and does not indicate his desire to be subject to the terms of this Title, he does not bring himself under this section [Code 1962 Section 72‑109], and his insurance carrier is not liable for injuries sustained by his employees. Carter v Associated Petroleum Carriers (1959) 235 SC 80, 110 SE2d 8. Dependents of Sweeney v Cape Fear Wood Corp. (1961) 237 SC 471, 118 SE2d 70.

In case of exempt employers, the Act is never applicable unless they take an affirmative act constituting an election to be bound by the Act. Bean v. Piedmont Interstate Fair Ass’n, 1954, 124 F.Supp. 385, reversed 222 F.2d 227.

Employer’s mere procurement of workers’ compensation insurance carrying multistate endorsement does not serve to estop employer from denying coverage in South Carolina, and substantial compliance with Section 42‑1‑380 is required. Nolan v. National Sales Co., Inc. (S.C.App. 1987) 292 S.C. 1, 354 S.E.2d 575, affirmed 294 S.C. 371, 364 S.E.2d 752.

Substantial compliance with this section [Code 1962 Section 72‑109] is sufficient to bring an employer under the Workmen’s Compensation Act. Conversely, an exempt employer is not covered by the Act unless there has been substantial compliance with the statutory requirements for exercising this election. Marsh v. Leo’s Inc. (S.C. 1967) 249 S.C. 45, 152 S.E.2d 350. Workers’ Compensation 394

Where insurance carrier filed a workmen’s compensation policy with the Commission purporting to insure a foreign corporation which was exempt from the South Carolina Compensation Law, but without the knowledge of such corporation, and where there had been no prior claim in this State against the corporation, this was not an election by the corporation to come under the Act pursuant to this section [Code 1962 Section 72‑109]. Sweeney’s Dependents v. Cape Fear Wood Corp. (S.C. 1961) 237 S.C. 471, 118 S.E.2d 70.

No verbal agreement to operate under the Act would constitute a compliance with the terms of the statute. Carter v. Associated Petroleum Carriers (S.C. 1959) 235 S.C. 80, 110 S.E.2d 8.

2. Notice

When no evidence indicates an otherwise exempt employer filed the requisite written notice of its desire to subject itself to the Workers’ Compensation Act, an appellate court will not find the exemption waived. Hartzell v. Palmetto Collision, LLC (S.C.App. 2013) 406 S.C. 233, 750 S.E.2d 97, rehearing denied, certiorari granted, reversed 415 S.C. 617, 785 S.E.2d 194, on remand 419 S.C. 87, 796 S.E.2d 145. Workers’ Compensation 1463

The obtaining of workmen’s compensation insurance and the filing of the notice thereof with the Commission constituted substantial compliance with the Act and sufficiently evidenced the election of an exempt employer to voluntarily come within its terms. White v. J. T. Strahan Co. (S.C. 1964) 244 S.C. 120, 135 S.E.2d 720.

In the absence of evidence whether an exempt employer had notified his employee of his election to come within the Compensation Act, it will be presumed that the employer complied with the law and notified the employee of such election. White v. J. T. Strahan Co. (S.C. 1964) 244 S.C. 120, 135 S.E.2d 720. Workers’ Compensation 1350

3. Effect of election

The election does not become effective until after the expiration of thirty days from the date of notice, the General Assembly evidently recognizing the necessity of specifying in clear and unambiguous terms the manner in which an exempt employer may come under the Act, so as to eliminate any uncertainty as to whether the rights of the parties would be governed by the common law or this Title. Carter v. Associated Petroleum Carriers (S.C. 1959) 235 S.C. 80, 110 S.E.2d 8.

But during the thirty‑day period employee can bring an action at common law for damages on account of any injuries received. Carter v. Associated Petroleum Carriers (S.C. 1959) 235 S.C. 80, 110 S.E.2d 8.

The mere fact that an employee remains silent when told by his employer that he has insurance coverage cannot be held as a waiver of his common‑law rights. Carter v. Associated Petroleum Carriers (S.C. 1959) 235 S.C. 80, 110 S.E.2d 8. Workers’ Compensation 2103

The Compensation Act becomes a part of a contract of insurance just as if the terms of the Act were written into the contract. It may be that both insurance agent and employer are unaware that an election to come under the Act does not become effective for thirty days, but they are bound by the Act and have constructive knowledge of it. Carter v. Associated Petroleum Carriers (S.C. 1959) 235 S.C. 80, 110 S.E.2d 8.

**SECTION 42‑1‑390.** Withdrawal of waiver of exemption by employer.

Any employer who, having elected to come under this title, being at that time exempt from this title, and subsequently desiring to withdraw from under its terms, may give notice in writing either to the commission that he no longer is under the terms of this title or to his insurer who shall give notice in writing to the commission that the employer is no longer under the terms of this title. If the insurer does not give the notice to the commission as required by this section, the insurer shall pay a penalty of one thousand dollars to the commission which shall be used by the commission to offset the costs of administering the provisions of Title 42. In the case where the employer gives the notice to the commission that he no longer is under the terms of this title, the commission shall, in turn, within thirty days of receipt of the employer’s notice, inform the employer, in writing, that he must provide written notification by a date certain to his employees of his withdrawal from the terms of this title; however, no employer is required to so notify his employees unless the commission informs him he must do so, as required by this section. At the expiration of sixty days from the date of written notice to the commission the employer no longer is liable under the terms of this title and may be permitted to set up any defense as he may be advised to any action brought against him for personal injury or death by accident to any employee.

HISTORY: 1962 Code Section 72‑110; 1952 Code Section 72‑110; 1947 (45) 548; 1988 Act No. 411, Section 1, eff March 28, 1988.

Library References

Workers’ Compensation 407.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Section 284.

**SECTION 42‑1‑400.** Liability of owner to workmen of subcontractor.

When any person, in this section and Sections 42‑1‑420 and 42‑1‑430 referred to as “owner,” undertakes to perform or execute any work which is a part of his trade, business or occupation and contracts with any other person (in this section and Sections 42‑1‑420 to 42‑1‑450 referred to as “subcontractor”) for the execution or performance by or under such subcontractor of the whole or any part of the work undertaken by such owner, the owner shall be liable to pay to any workman employed in the work any compensation under this title which he would have been liable to pay if the workman had been immediately employed by him.

HISTORY: 1962 Code Section 72‑111; 1952 Code Section 72‑111; 1942 Code Section 7035‑22; 1936 (39) 1231.

CROSS REFERENCES

Definition of “employee”, see Section 42‑1‑130.

“Entire work force”, within meaning of provisions regulating staff leasing services, includes persons considered employees under this section, see Section 40‑68‑10.

Library References

Workers’ Compensation 344 to 361.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 185, 238 to 257.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Contribution Section 11, Defendants Immune from Direct Action.

S.C. Jur. Master and Servant Section 2, Test to Determine Status as Employee.

Treatises and Practice Aids

Modern Workers’ Compensation Section 105:18, Owners and Contractors‑Contracting Out Part of One’s Business.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Surveying of South Carolina Law: Workmen’s Compensation; Statutory Employer ‑ Liability of Owner of Workmen of Contractor. 32 S.C. L. Rev. 228 (August 1980).

Employer‑Employee Relationship. 25 S.C. L. Rev. 510.

Independent Contractor in South Carolina. 4 SCLQ 150, 168 (1951).

NOTES OF DECISIONS

In general 1

Construction, statutory employees 10

Corporations, statutory employees 11

Construction and application 2

Employees covered 7

Estoppel 16

Governmental immunity 15

Jurisdiction 3

Liability of owner, intermediate contractor and subcontractor 6

Manufacturing, statutory employees 12

Owners 5

Questions of law 17

Remedy is exclusive 4

Review 19

Sales, statutory employees 13

Statutory employees 9‑14

In general 9

Construction 10

Corporations 11

Manufacturing 12

Sales 13

Transportation 14

Statutory employment 8

Sufficiency of evidence 18

Transportation, statutory employees 14

1. In general

The manifest purpose of this section [Code 1962 Section 72‑111] is to afford the benefits of compensation to the men who are exposed to the risks of the owner’s business, and to place the burden of paying compensation upon the organizer of the enterprise, and in consequence, both the owner and the contractors whom he engages to do his work, are subjected to the requirements of the Act, and the workers receive double protection. Blue Ridge Rural Electric Co‑operative, Inc. v Byrd (1956, CA4 SC) 238 F2d 346, revd on other ground in 356 US 525, 2 L Ed 2d 953, 78 S Ct 893, reh den 357 US 933, 2 L Ed 2d 1375, 78 S Ct 1366 and (ovrld on other grounds Hanna v Plumer, 380 US 460, 14 L Ed 2d 8, 85 S Ct 1136, 9 FR Serv 2d 1.3, Case 1). MacMullen v South Carolina Electric & Gas Co. (1963, CA4 SC) 312 F2d 662, cert den 373 US 912, 10 L Ed 2d 413, 83 S Ct 1302.

It imposes an absolute liability upon an owner of a business to provide compensation, usually effected by carrying insurance for the employees of the independent contractor. Blue Ridge Rural Elec. Co‑op., Inc. v. Byrd (C.A.4 (S.C.) 1956) 238 F.2d 346, certiorari granted 77 S.Ct. 557, 352 U.S. 999, 1 L.Ed.2d 544, reversed 78 S.Ct. 893, 356 U.S. 525, 2 L.Ed.2d 953, rehearing denied 78 S.Ct. 1366, 357 U.S. 933, 2 L.Ed.2d 1375.

Any doubts as to a worker’s status are to be resolved in favor of coverage under the Workers’ Compensation Act. Fortner v. Thomas M. Evans Const. and Development, LLC (S.C.App. 2013) 402 S.C. 421, 741 S.E.2d 538. Workers’ Compensation 1348

Any doubts as to a worker’s status as statutory employee should be resolved in favor of including him or her under the Workers’ Compensation Act. Edens v. Bellini (S.C.App. 2004) 359 S.C. 433, 597 S.E.2d 863. Workers’ Compensation 187

As used in statute extending workers’ compensation coverage to injured “workman” of subcontractor performing work which is part of owner’s trade, business or occupation, “workman” is synonymous with employee; thus, such statute imposes liability on upstream employer if injured worker is employee of subcontractor, but not if worker is independent contractor of subcontractor. Voss v. Ramco, Inc. (S.C.App. 1997) 325 S.C. 560, 482 S.E.2d 582, rehearing denied, certiorari granted. Workers’ Compensation 278

Any doubts regarding a worker’s status as an employee should be resolved in favor of including him or her under the Workers’ Compensation Act, Section 42‑1‑400 et seq. Riden v. Kemet Electronics Corp. (S.C.App. 1993) 313 S.C. 261, 437 S.E.2d 156. Workers’ Compensation 187

Effect of Sections 42‑1‑400 through 42‑1‑450, when brought into operation, is to impose absolute liability of immediate employer upon owner and/or general contractor although latter is not in law immediate employer of injured workmen; owner who obtains benefit of work inevitably absorbs costs of providing protection for workers and, in return, employer receives immunity from other remedies which ordinarily might be sought by employee; “dual‑capacity doctrine,” under which employer, normally shielded from tort liability by exclusive remedy principle, becomes liable in tort to his own employee if he occupies, in addition to his capacity as employer, second capacity that confers upon him obligations independent of those imposed upon him as employer, is inapplicable where injured workman is engaged in work which is directly relates to his employment; to allow recovery where workman was employed to construct roof and was killed when roof collapsed would make employer’s liability uncertain and indeterminate. Parker v. Williams and Madjanik, Inc. (S.C. 1980) 275 S.C. 65, 267 S.E.2d 524.

The purpose of this section [Code 1962 Section 72‑111] is to extend the benefits of workmen’s compensation to workmen who otherwise would not be entitled to them. It is a protection of the employees of irresponsible contractors who do not provide workmen’s compensation coverage for their employees, and prevents employers from escaping liability by doing through independent contractors what they would otherwise do through their own employees. Adams v. Davison‑Paxon Co. (S.C. 1957) 230 S.C. 532, 96 S.E.2d 566.

This section [Code 1962 Section 72‑111] clearly evinces an intention of the legislature not to include therein a subcontractor or independent contractor, as to injuries to them, but only workmen or employees of either the “owner” or of the subcontractor; and that therefore the legal maxim, expressio unius est exclusio alterius, is applicable. McDowell v. Stilley Plywood Co. (S.C. 1947) 210 S.C. 173, 41 S.E.2d 872.

The intention on the part of the General Assembly in including this section [Code 1962 Section 72‑111] and Code 1962 Sections 72‑112 to 72‑116 in the Compensation Act was to extend the benefits of the Act so as to cover workers who otherwise would not be entitled to the protection thereof. Marchbanks v. Duke Power Co. (S.C. 1939) 190 S.C. 336, 2 S.E.2d 825.

2. Construction and application

This section [Code 1962 Section 72‑111] is subject to the rule of liberal construction of the Compensation Law to include employments within it. Adams v. Davison‑Paxon Co. (S.C. 1957) 230 S.C. 532, 96 S.E.2d 566.

3. Jurisdiction

Whether truck driver, who was injured while waiting for his truck to be loaded at manufacturer’s plant, was statutory employee of manufacturer under Workers Compensation Law was question of subject matter jurisdiction. Carrier v. Westvaco Corp., 1992, 806 F.Supp. 1242, affirmed 46 F.3d 1122. Federal Courts 2073

It is South Carolina’s policy to resolve jurisdictional doubts in favor of the inclusion of employers and employees under the Workers’ Compensation Act. Fortner v. Thomas M. Evans Const. and Development, LLC (S.C.App. 2013) 402 S.C. 421, 741 S.E.2d 538. Workers’ Compensation 1347; Workers’ Compensation 1348

The determination of whether a worker is a statutory employee under Workers’ Compensation Code is jurisdictional and, therefore, the question on appeal is one of law; as a result, appellate court has the power and duty to review the entire record and decide the jurisdictional facts in accord with its view of the preponderance of the evidence. Fortner v. Thomas M. Evans Const. and Development, LLC (S.C.App. 2013) 402 S.C. 421, 741 S.E.2d 538. Workers’ Compensation 1939.11(3)

Determination of whether a worker is a statutory employee, for purposes of Workers’ Compensation Act, is jurisdictional, and therefore the question on appeal regarding that determination is one of law. Cooke v. Palmetto Health Alliance (S.C.App. 2005) 367 S.C. 167, 624 S.E.2d 439, rehearing denied. Workers’ Compensation 187; Workers’ Compensation 1939.11(3)

In determining jurisdictional issue of whether worker is statutory employee whose exclusive remedy against employer is under Workers’ Compensation Act, Supreme Court has power and duty to review entire record and decide jurisdictional fact in accordance with preponderance of evidence. Glass v. Dow Chemical Co. (S.C. 1997) 325 S.C. 198, 482 S.E.2d 49. Workers’ Compensation 2141

For purposes of the Workers’ Compensation Act, Section 42‑1‑400, the question of whether a worker is a statutory employee is jurisdictional and is therefore a question of law for the court; any dispute in the facts giving rise to this issue should be resolved by the court, not the jury. Riden v. Kemet Electronics Corp. (S.C.App. 1993) 313 S.C. 261, 437 S.E.2d 156.

An injured employee was not required to establish that his immediate employer was financially irresponsible before bringing a claim against his statutory employer, since the statutory employer is entitled to indemnity from the immediate employer, either through a separate action or by joining him as a defendant in the action brought by the injured employee, and Section 42‑1‑450 provides that nothing in the sections preceding shall be construed as preventing the employee from recovering from a subcontractor instead of the principal contractor. Long v. Atlantic Homes (S.C. 1993) 311 S.C. 237, 428 S.E.2d 711.

Under Rule 26(b)(1), SCRCP, discovery is available to develop any factual issues involved in a jurisdictional question. Thus, prior to ruling upon a motion challenging jurisdiction, a court may compel discovery in aid of its decision and impose sanctions for a discovery violation. Thus, a trial court erred in refusing to rule on the merits of a plaintiff’s motion to compel discovery pursuant to Rule 37(a), SCRCP, until there was a determination as to whether the court had subject matter jurisdiction or the plaintiff was a “statutory employee” whose claim was within the exclusive jurisdiction of the Workers’ Compensation Law. Bailey v. Owen Elec. Steel Co. of South Carolina, Inc. (S.C. 1990) 301 S.C. 399, 392 S.E.2d 186.

A corporate employer’s “statutory employees,” whose status as statutory employees resulted from their employment by the corporate employer’s sister corporation, could be included to satisfy the enumerated 4‑person jurisdictional requirement of Section 42‑1‑360(2). Ost v. Integrated Products, Inc. (S.C. 1988) 296 S.C. 241, 371 S.E.2d 796. Workers’ Compensation 198

4. Remedy is exclusive

The remedy provided for in this section [Code 1962 Section 72‑111] is exclusive and the injured employee of a contractor may not maintain an action at common law against the “owner.” Marchbanks v Duke Power Co. (1939) 190 SC 336, 2 SE2d 825. Adams v Davison‑Paxon Co. (1957) 230 SC 532, 96 SE2d 566. Bell v South Carolina Electric & Gas Co. (1959) 234 SC 577, 109 SE2d 441. MacMullen v South Carolina Electric & Gas Co. (1963, CA4 SC) 312 F2d 662, cert den 373 US 912, 10 L Ed 2d 413, 83 S Ct 1302.

This section [Code 1962 Section 72‑111] grants a rural electric cooperative immunity from a negligence action if the proofs establish that its own crews had constructed lines and sub‑stations which, like the work contracted to an injured workman’s employer, were necessary for the distribution of the electric power which the cooperative was in the business of selling. Byrd v. Blue Ridge Rural Elec. Co‑op., Inc. (U.S.S.C. 1958) 78 S.Ct. 893, 356 U.S. 525, 2 L.Ed.2d 953, rehearing denied 78 S.Ct. 1366, 357 U.S. 933, 2 L.Ed.2d 1375.

A contractor’s employee, who brings a common‑law negligence action in a Federal court basing jurisdiction on diversity of citizenship, State practice notwithstanding, is entitled to a jury determination of the factual issues raised by the affirmative defense that under this section [Code 1962 Section 72‑111] and Code 1962 Sections 72‑121 and 72‑123, the plaintiff—because the work contracted to be done by his employee was work of the kind also done by the defendant’s own construction and maintenance crews—had the status of a statutory employee of the defendant and was therefore barred from suing the defendant at law because obliged to accept statutory compensation benefits as the exclusive remedy for his injuries. Byrd v. Blue Ridge Rural Elec. Co‑op., Inc. (U.S.S.C. 1958) 78 S.Ct. 893, 356 U.S. 525, 2 L.Ed.2d 953, rehearing denied 78 S.Ct. 1366, 357 U.S. 933, 2 L.Ed.2d 1375.

The holding in Ballard v Southern Cotton Oil Co. (1956, DC SC) 145 F Supp 882, that an action at law would lie against the owner of a building for the death of a workman who was killed while working on the wall of a building for the owner as an employee of an independent contractor, although his estate had recovered compensation from his immediate employer, based on the theory that this section imposes liability on an owner to provide compensation only when the contractor fails to provide coverage, is in direct conflict with the decisions of the Supreme Court of South Carolina and cannot be followed. Blue Ridge Rural Elec. Co‑op., Inc. v. Byrd (C.A.4 (S.C.) 1956) 238 F.2d 346, certiorari granted 77 S.Ct. 557, 352 U.S. 999, 1 L.Ed.2d 544, reversed 78 S.Ct. 893, 356 U.S. 525, 2 L.Ed.2d 953, rehearing denied 78 S.Ct. 1366, 357 U.S. 933, 2 L.Ed.2d 1375.

Once it is established that the work being done by the subcontractor was a part of the general business of the owner within the meaning of this section [Code 1962 Section 72‑111], even though the subcontractor might occupy the status of an independent contractor, the employees of the subcontractor so engaged are limited under Code 1962 Section 72‑121 to the exclusive remedy of workmen’s compensation laws. Mack v. R. C. Motor Lines, Inc. (D.C.S.C. 1973) 365 F.Supp. 416.

Employee barred from bringing tort action against bus company but required to proceed under Workmen’s Compensation Law. Berry v. Atlantic Greyhound Lines, 1939, 30 F.Supp. 188.

Statutory employer‑employee relationship existed between plant owner and worker who was crushed to death by machinery while working as a subcontractor at plant, and thus, exclusive remedy for worker’s estate was to file workers’ compensation claim; keeping dye vat under repair was important and necessary part of plant owner’s business, and owner’s employees also performed work on vat. Edens v. Bellini (S.C.App. 2004) 359 S.C. 433, 597 S.E.2d 863. Workers’ Compensation 352; Workers’ Compensation 2164

Statutory employee may not maintain a negligence cause of action against his direct employer or his statutory employer; employee’s sole remedy for work‑related injuries is under Workers’ Compensation Act. Hancock v. Wal‑Mart Stores, Inc. (S.C.App. 2003) 355 S.C. 168, 584 S.E.2d 398, rehearing denied, certiorari denied. Workers’ Compensation 2084

Statutory employee doctrine is a double‑edged sword to worker who, though included in compensation, is also bound by exclusivity provision of the Workers’ Compensation Act. Abbott v. The Limited, Inc. (S.C.App. 1998) 332 S.C. 171, 503 S.E.2d 494, rehearing denied, certiorari granted, reversed 338 S.C. 161, 526 S.E.2d 513. Workers’ Compensation 187

An employee of a contractor, who was injured while removing asbestos from the owner’s premises, was a statutory employee of the owner under Section 42‑1‑400, and thus his recovery was limited to workers’ compensation benefits under Section 42‑1‑540, where (1) preventive maintenance of the premises, including removal and reinstallation of insulation, was an ongoing process, and (2) the owners’ employees had previously routinely removed and disposed of asbestos until the owner hired the outside contractor, who specialized in asbestos removal. Wheeler v. Morrison Machinery Co. (S.C.App. 1993) 313 S.C. 440, 438 S.E.2d 264. Workers’ Compensation 288

The filing of a workers’ compensation claim was an injured truck driver’s sole remedy against a paper manufacturer where the driver was injured while transporting a by‑product of the manufacturing process; the driver was a statutory employee because the transportation of the by‑product was an integral part of manufacturing paper. Woodard v. Westvaco Corp. (S.C.App. 1993) 315 S.C. 329, 433 S.E.2d 890, rehearing denied, certiorari granted, opinion vacated, appeal dismissed 319 S.C. 240, 460 S.E.2d 392.

The exclusivity provisions of Sections 42‑1‑540 and 42‑5‑10 do not extend immunity to a subcontractor sued for negligence by the employee of the business owner, even though under Section 42‑1‑400 the subcontractor becomes a “statutory employee” of the owner for the purposes of workers’ compensation liability, and thus negligence and loss of consortium claims by the employee and her spouse against the subcontractor were not barred. Boone v. Huntington and Guerry Elec. Co. (S.C. 1993) 311 S.C. 550, 430 S.E.2d 507, rehearing denied.

An injured employee was not barred from bringing a negligence action against an electrical contractor working for the employer where the contractor ran a conduit across a roadway and the employee tripped thereon; since the contractor had no workers’ compensation liability to the employee, there was no tort immunity to the lawsuit. Boone v. Huntington and Guerry Elec. Co. (S.C.App. 1992) 307 S.C. 529, 416 S.E.2d 212, rehearing denied, certiorari granted, affirmed 311 S.C. 550, 430 S.E.2d 507.

Worker’s Compensation Act did not provide exclusive remedy for worker injured while employed by a subcontractor to install an electrical system for a plant being constructed for a manufacturer by a general contractor, since the electrical installation was not part of the trade or business of the manufacturer which was in the business of manufacturing and selling of batteries and related products and, although the manufacturer had been involved in the construction of numerous facilities on property which it owned or leased and managed, the manufacturer did not have a construction division and none of the construction work was performed by its regular employees but, rather, the manufacturer merely prepared the specific designs for certain parts of the facilities, or oversaw such designs, approved engineering plans and, in some instances, provided supervisory personnel to provide general assistance in the contracting of the contractors and subcontractors and of coordinating their activities. Raines v. Gould, Inc. (S.C.App. 1986) 288 S.C. 541, 343 S.E.2d 655.

A plaintiff, having collected death benefits for death of employee of a contractor from the contractor, a construction company doing work for an owner (the defendant power company) which was part of its business, trade or occupation, is barred from bringing a common‑law action against the owner, who is a statutory employer, and the plaintiff cannot recover from both, and recovery under the Compensation Act bars a recovery or action at common law. Bell v. South Carolina Elec. & Gas Co. (S.C. 1959) 234 S.C. 577, 109 S.E.2d 441.

Where millinery department of a department store was operated under an agency contract, which provided that the store designate the location of the department (which was not separated from other departments) and that the whole public conduct of the business be in the name of the store, an employee working in the department was not entitled to maintain an action for negligence against the store in the maintenance of its basement stairway, but was confined to her remedy under this section [Code 1962 Section 72‑111]. Adams v. Davison‑Paxon Co. (S.C. 1957) 230 S.C. 532, 96 S.E.2d 566.

Code 1962 Section 72‑121 limits the remedy of an employee of subcontractor who is a statutory employee of an owner under this section [Code 1962 Section 72‑111], so that the employee may not maintain a negligence action against the employer. Adams v. Davison‑Paxon Co. (S.C. 1957) 230 S.C. 532, 96 S.E.2d 566.

5. Owners

The term “owner” is synonymous with the principal contractor, that is to say the party of the first part to the contract with the “subcontractor” who is the second party to the contract for the execution or performance of the work to be done by the owner. Marchbanks v Duke Power Co. (1939) 190 SC 336, 2 SE2d 825. Kennerly v Ocmulgee Lumber Co. (1945) 206 SC 481, 34 SE2d 792.

This section [Code 1962 Section 72‑111] is applicable as making the “owner” liable where such “owner” contracts to have the work done by a contractor, and an employee of the contractor is injured. Marchbanks v Duke Power Co. (1939) 190 SC 336, 2 SE2d 825. Kennerly v Ocmulgee Lumber Co. (1945) 206 SC 481, 34 SE2d 792.

Terms “owner” and “contractor” can be used interchangeably, for purposes of statutory employment section of Workers’ Compensation Act; thus, depending on the nature of the work performed by the subcontractor, an employee of a subcontractor may be considered a statutory employee of the owner or upstream employer. Collins v. Charlotte (S.C. 2015) 412 S.C. 283, 772 S.E.2d 510, rehearing denied. Workers’ Compensation 351; Workers’ Compensation 352

Test for determining whether an employer qualifies as a business under Workers’ Compensation Act, such that owner workers’ compensation liability will attach is not whether employer is in business for profit, but whether employer is in business at all; if he supplies a product or service, it is immaterial what he does with his profits, or whether he expects or gets any profits at all. Ferguson v. New Hampshire Ins. Co. (S.C.App. 2015) 412 S.C. 203, 771 S.E.2d 851, rehearing denied, certiorari denied. Workers’ Compensation 352

Activity is considered “part of the owner’s trade, business, or occupation” for purposes of the statute providing that any owner for whom a subcontractor undertakes to perform a part of owner’s trade, business or occupation shall be liable to pay workers’ compensation, in same manner as owner would pay to employees he immediately employs, to an injured employee of subcontractor engaged in owner’s work, if it (1) is an important part of owner’s business or trade; (2) is a necessary, essential, and integral part of owner’s business; or (3) has previously been performed by owner’s employees. Ferguson v. New Hampshire Ins. Co. (S.C.App. 2015) 412 S.C. 203, 771 S.E.2d 851, rehearing denied, certiorari denied. Workers’ Compensation 352

“Owner,” as used in workers’ compensation statute, providing that any “owner” for whom a subcontractor undertakes to perform a part of owner’s trade, business or occupation shall be liable to pay workers’ compensation, in the same manner as owner would pay to employees he immediately employs, to an injured employee of subcontractor engaged in owner’s work, is synonymous with “principal contractor.” Fortner v. Thomas M. Evans Const. and Development, LLC (S.C.App. 2013) 402 S.C. 421, 741 S.E.2d 538. Workers’ Compensation 351

Insured construction company was the owner or principal contractor in regards to pressure washing of house for purposes of workers’ compensation statute, providing that any “owner” for whom a subcontractor undertakes to perform a part of owner’s trade, business or occupation was liable to pay workers’ compensation, in the same manner as owner would pay to employees he immediately employed, to an injured employee of subcontractor engaged in owner’s work; although worker was not aware of it, he was pressure washing the house at the direction of construction company, and while worker’s employer paid him for his hours spent pressure washing, the construction company paid the employer by crediting its tab with construction company. Fortner v. Thomas M. Evans Const. and Development, LLC (S.C.App. 2013) 402 S.C. 421, 741 S.E.2d 538. Workers’ Compensation 351

The term “owner” as used in Section 42‑1‑400 is synonymous with “principal contractor.” Murray v. Aaron Mizell Trucking Co. (S.C.App. 1985) 286 S.C. 351, 334 S.E.2d 128.

6. Liability of owner, intermediate contractor and subcontractor

An owner’s liability either for payment of compensation or tort damages does not rest upon the degree of control retained by the owner over the injured employee of a subcontractor. Corollo v. S. S. Kresge Co. (C.A.4 (S.C.) 1972) 456 F.2d 306, certiorari denied 92 S.Ct. 2440, 407 U.S. 911, 32 L.Ed.2d 686.

The indemnification provisions (Code 1962 Sections 72‑111 to 72‑116) make it plain that the primary obligation is that of the immediate employer, next of an intermediate contractor, only lastly that of the employer under this section [Code 1962 Section 72‑111] or Code 1962 Section 72‑112. Chavis v. E. I. Du Pont De Nemours & Co. (C.A.4 (S.C.) 1960) 283 F.2d 929, certiorari denied 81 S.Ct. 748, 365 U.S. 836, 5 L.Ed.2d 745.

The indemnification and immunity sections (Code 1962 Sections 72‑111 to 72‑116 and 72‑121) refer to the “principal contractor” and to the “employer,” terms which may or may not be restricted to those employer‑contractors who fall within the definitions of this section [Code 1962 Section 72‑111] and Code 1962 Section 72‑112. Chavis v. E. I. Du Pont De Nemours & Co. (C.A.4 (S.C.) 1960) 283 F.2d 929, certiorari denied 81 S.Ct. 748, 365 U.S. 836, 5 L.Ed.2d 745.

Once the highest responsible person is determined by reference to this section [Code 1962 Section 72‑111] and Code 1962 Section 72‑112, every intermediate contractor and subcontractor under him shoulders the same, indeed the primary, obligation, for the “principal contractor” is entitled to indemnity from him and to call him in to defend the compensation claim. Chavis v. E. I. Du Pont De Nemours & Co. (C.A.4 (S.C.) 1960) 283 F.2d 929, certiorari denied 81 S.Ct. 748, 365 U.S. 836, 5 L.Ed.2d 745. Workers’ Compensation 360

It cannot be held that an owner is not obliged to provide compensation for injuries incurred in the course of construction work performed on his behalf as part of his business, if he customarily lets the work out to independent contractors and does not perform it himself. Blue Ridge Rural Elec. Co‑op., Inc. v. Byrd (C.A.4 (S.C.) 1956) 238 F.2d 346, certiorari granted 77 S.Ct. 557, 352 U.S. 999, 1 L.Ed.2d 544, reversed 78 S.Ct. 893, 356 U.S. 525, 2 L.Ed.2d 953, rehearing denied 78 S.Ct. 1366, 357 U.S. 933, 2 L.Ed.2d 1375.

An employee of a subcontractor who was injured while standing on a pier waiting to have his truck loaded, was acting in the course of his employment, as his waiting was consistent with his contract of hire and was incidental to his employment as a truck driver. Carrier v. Westvaco Corp., 1992, 806 F.Supp. 1242, affirmed 46 F.3d 1122. Workers’ Compensation 656

Generally, a higher tier contractor is considered the statutory‑employer of an employee of a lower tier contractor, and thus, the higher tier contractor remains liable to pay workers’ compensation benefits to an employee if he sustains a compensable injury. Hopper v. Terry Hunt Const. (S.C. 2009) 383 S.C. 310, 680 S.E.2d 1, rehearing denied. Workers’ Compensation 351

Effect of Sections 42‑1‑400 through 42‑1‑450, when brought into operation, is to impose absolute liability of immediate employer upon owner and/or general contractor although latter is not in law immediate employer of injured workmen; owner who obtains benefit of work inevitably absorbs costs of providing protection for workers and, in return, employer receives immunity from other remedies which ordinarily might be sought by employee; “dual‑capacity doctrine,” under which employer, normally shielded from tort liability by exclusive remedy principle, becomes liable in tort to his own employee if he occupies, in addition to his capacity as employer, second capacity that confers upon him obligations independent of those imposed upon him as employer, is inapplicable where injured workman is engaged in work which is directly relates to his employment; to allow recovery where workman was employed to construct roof and was killed when roof collapsed would make employer’s liability uncertain and indeterminate. Parker v. Williams and Madjanik, Inc. (S.C. 1980) 275 S.C. 65, 267 S.E.2d 524.

It does not enlarge the owner’s liability for compensation beyond that which would have existed had the workman been directly employed by him. Benbow v. Edmunds High School (S.C. 1951) 220 S.C. 363, 67 S.E.2d 680.

An owner may not be held liable under this section [Code 1962 Section 72‑111] for compensation benefits to an employee of a contractor engaged to do minor repairs of a casual nature when he would not be liable, under Code 1962 Sections 72‑11 and 72‑107, excluding casual employees from the operation of this Title, if the injured employee had been hired directly by him. Benbow v. Edmunds High School (S.C. 1951) 220 S.C. 363, 67 S.E.2d 680.

7. Employees covered

Common‑law servants protected. If the common‑law relationship of master and servant exists, the plaintiff‑servant is entitled to compensation under the general provisions of this Act independently of the provisions of this section [Code 1962 Section 72‑111]. Corollo v. S. S. Kresge Co. (C.A.4 (S.C.) 1972) 456 F.2d 306, certiorari denied 92 S.Ct. 2440, 407 U.S. 911, 32 L.Ed.2d 686.

Where truck driver was injured while standing on pier waiting to have his truck loaded at manufacturer’s plant, driver was acting within course of his employment so as to bring him within provisions of Workers Compensation Law since act of “waiting” was consistent with driver’s contract for hire and was incidental to his employment as truck driver. Carrier v. Westvaco Corp., 1992, 806 F.Supp. 1242, affirmed 46 F.3d 1122. Workers’ Compensation 656

For casual employee to be excluded from coverage of Workmen’s Compensation Law as provided under Section 42‑1‑130, work being done by employee must be both casual and not in trade, business, profession or occupation of employer; thus, truck driver who was injured while waiting for his truck to be loaded at manufacturer’s plant was not subject to exclusion as casual employee, where work being performed by driver was part of the trade, business, profession or occupation of employer, and where driver’s employment through carrier regularly used by manufacturer was arguably more than strictly chance employment. Carrier v. Westvaco Corp., 1992, 806 F.Supp. 1242, affirmed 46 F.3d 1122.

Under South Carolina’s borrowed servant doctrine, when a general employer lends an employee to a special employer, that special employer is liable for workers’ compensation if: (1) there is a contract of hire between the employee and the special employer; (2) the work being done by the employee is essentially that of the special employer; and (3) the special employer has the right to control the details of the employee’s work. Collins v. Charlotte (S.C.App. 2012) 400 S.C. 50, 732 S.E.2d 630, affirmed 412 S.C. 283, 772 S.E.2d 510, rehearing denied. Workers’ Compensation 203

For purposes of statutory exception to general rule that higher tier contractor remains liable to pay workers’ compensation benefits to employee of lower tier contractor if he sustains a compensable injury, which allows liability to be transferred from higher tier contractor to Uninsured Employers’ Fund if higher tier contractor has properly documented lower tier contractor’s claim that it retains workers’ compensation insurance, phrase “subcontractor has represented himself ... as having workers’ compensation insurance” in conjunction with “at the time the contractor or subcontractor was engaged to perform work” encompasses a continuous spectrum and includes the complete time frame in which subcontractor is engaged to perform work; in other words, in order to transfer liability to the Fund, a general contractor may not rely upon a certificate reflecting an expired policy as documentation of workers’ compensation insurance. Hopper v. Terry Hunt Const. (S.C. 2009) 383 S.C. 310, 680 S.E.2d 1, rehearing denied. Workers’ Compensation 359

Fact that subcontractor and, by extension, subcontractor’s employees, may be independent contractors as to upstream employer does not preclude application of statute extending workers’ compensation coverage to injured employee of subcontractor performing work which is part of owner’s trade, business or occupation. Voss v. Ramco, Inc. (S.C.App. 1997) 325 S.C. 560, 482 S.E.2d 582, rehearing denied, certiorari granted. Workers’ Compensation 304

Plaintiff’s negligence action against a subcontractor was not barred by the exclusive remedy provision of worker’s compensation where the plaintiff was neither employed by the subcontractor nor did the subcontractor have any worker’s compensation liability to the plaintiff. Day v. Sanders Bros., Inc. (S.C.App. 1993) 315 S.C. 95, 431 S.E.2d 629. Workers’ Compensation 2166

Where a logger contracted with a lumber manufacturing company to cut and haul timber to the latter’s plant, and the transporting of the timber was an integral part of the logger’s trade, business or occupation, there was an implied contract between the logger and a contract hauler which hauled the timber to the lumber company’s plant, the hauler was a subcontractor of the logger, and the logger was liable, under Section 41‑1‑400 for compensation to be paid to an employee of the hauler who was injured in the course of the work. The logger was not relieved of liability by virtue of the facts that the lumber company contacted the hauler, arranged for its services, and compensated the hauler with fees deducted from the amounts it had agreed to pay to the logger. Murray v. Aaron Mizell Trucking Co. (S.C.App. 1985) 286 S.C. 351, 334 S.E.2d 128.

A subcontractor, who had employees of his own, could recover worker compensation benefits from the owner, since the owner was still liable for benefits due any employee inasmuch as although the owner asserted that the claimant failed to give the requisite notice, the record indicated that the claimant elected to be covered by the owner’s compensation insurance, he paid for the coverage with the premiums deducted from his wages, and the insurer had notice of the election by auditing the owner’s records to calculate the amount of premium due. Carver v. Bill Pridemore & Co. (S.C. 1982) 278 S.C. 235, 294 S.E.2d 419. Workers’ Compensation 403

The word “workman” is synonymous with the word “employee,” and the employees of a subcontractor engaged in the work, business or occupation of the “owner” or principal contractor, are employees of the “owner” within the intendment of this Act, and therefore entitled to the benefits therein provided. McDowell v. Stilley Plywood Co. (S.C. 1947) 210 S.C. 173, 41 S.E.2d 872. Workers’ Compensation 354

8. Statutory employment

Delivery driver, who was employed by subcontractor that was hired by primary contractor to perform an express delivery to Wisconsin, was “statutory employee” of the primary contractor on return‑trip to South Carolina from the delivery in Wisconsin, for workers’ compensation purposes, though primary contractor alleged its contract with subcontractor ended when cargo was delivered; nature of work required immediate travel to Wisconsin and expected return trip to South Carolina, primary contractor knew that trip was being made especially for it and that it was unlikely that driver would have cargo on return trip for another customer of subcontractor, nature of work for primary contractor’s direct employees was same as work performed by driver, and primary contractor’s direct employees were covered on their return trips. Collins v. Charlotte (S.C. 2015) 412 S.C. 283, 772 S.E.2d 510, rehearing denied. Workers’ Compensation 351

Business that matched truck renters with moving help was not statutory employer of workers’ compensation claimant, a local mover business matched with truck renter, even if it relied on movers to receive 15% of total amount paid by customer for local movers’ services; business that matched renters and local movers was not in moving business itself, and never contracted with anyone to move or engage in any moving itself. Ferguson v. New Hampshire Ins. Co. (S.C.App. 2015) 412 S.C. 203, 771 S.E.2d 851, rehearing denied, certiorari denied. Workers’ Compensation 293

The effect of statutory employment provisions of the Workers’ Compensation Act when brought into operation is to impose the absolute liability of an immediate employer upon the owner and/or general contractor although it was not in law the immediate employer of the injured workman. Fortner v. Thomas M. Evans Const. and Development, LLC (S.C.App. 2013) 402 S.C. 421, 741 S.E.2d 538. Workers’ Compensation 351; Workers’ Compensation 352

The concept of statutory employment provides an exception to the general rule that coverage under the Workers’ Compensation Act requires the existence of an employer‑employee relationship; the statutory employee doctrine converts conceded non‑employees into employees for purposes of the Act to prevent owners and contractors from subcontracting out their work to avoid liability for injuries incurred in the course of employment. Fortner v. Thomas M. Evans Const. and Development, LLC (S.C.App. 2013) 402 S.C. 421, 741 S.E.2d 538. Workers’ Compensation 187; Workers’ Compensation 233

Statutory employment is an exception to the general rule that coverage under the Act requires the existence of an employer‑employee relationship, which converts conceded non‑employees into employees for purposes of the Workers’ Compensation Act. Collins v. Charlotte (S.C.App. 2012) 400 S.C. 50, 732 S.E.2d 630, affirmed 412 S.C. 283, 772 S.E.2d 510, rehearing denied. Workers’ Compensation 187

The factual circumstances from which alleged statutory employment relationships arise are so varied that no single bright line test is readily available. Meyer v. Piggly Wiggly No. 24, Inc. (S.C.App. 1998) 331 S.C. 261, 500 S.E.2d 190, rehearing denied, certiorari granted, affirmed 338 S.C. 471, 527 S.E.2d 761. Workers’ Compensation 234

Each situation that allegedly gives rise to a statutory employment relationship must be evaluated on a case‑by‑case basis. Meyer v. Piggly Wiggly No. 24, Inc. (S.C.App. 1998) 331 S.C. 261, 500 S.E.2d 190, rehearing denied, certiorari granted, affirmed 338 S.C. 471, 527 S.E.2d 761. Workers’ Compensation 234

9. Statutory employees—In general

There is no particular formula by which to determine whether an owner is a statutory employer under this section [Code 1962 Section 72‑111]. Byrd v. Blue Ridge Rural Elec. Co‑op., Inc. (U.S.S.C. 1958) 78 S.Ct. 893, 356 U.S. 525, 2 L.Ed.2d 953, rehearing denied 78 S.Ct. 1366, 357 U.S. 933, 2 L.Ed.2d 1375.

Once it is established that the work being done by the subcontractor is part of the owner’s general business, the employees of the subcontractor become statutory employees of the owner even though their immediate employer is an independent contractor. Corollo v. S. S. Kresge Co. (C.A.4 (S.C.) 1972) 456 F.2d 306, certiorari denied 92 S.Ct. 2440, 407 U.S. 911, 32 L.Ed.2d 686. Workers’ Compensation 354

Whatever a contractor engages to do is his work, whether he executes it through employees immediately or remotely employed by him. Chavis v. E. I. Du Pont De Nemours & Co. (C.A.4 (S.C.) 1960) 283 F.2d 929, certiorari denied 81 S.Ct. 748, 365 U.S. 836, 5 L.Ed.2d 745.

An employee of a subcontractor is a statutory employee of the owner if three tests are satisfied: (1), is the activity an important part of the owner’s business; (2), is the activity a necessary, essential, or integral part of the business; (3), three has the identical activity been performed by employees of the principal employer. Carrier v. Westvaco Corp., 1992, 806 F.Supp. 1242, affirmed 46 F.3d 1122.

Where the work being performed by an employee of a subcontractor was part of the trade, business, profession or occupation of owner, it is not necessary to consider whether employee’s employment was casual since for an employee to be excluded under the act, his employment must be both casual and not in the trade, business, profession or occupation of his employer. Carrier v. Westvaco Corp., 1992, 806 F.Supp. 1242, affirmed 46 F.3d 1122.

Once the statutory employee status attaches between employee of subcontractor and owner, for workers’ compensation purposes, the extent of the status is determined by the nature of the work contracted to be performed. Collins v. Charlotte (S.C. 2015) 412 S.C. 283, 772 S.E.2d 510, rehearing denied. Workers’ Compensation 351

In the statutory employment analysis, for determining whether employee of a subcontractor is statutory employee of the owner or upstream employer for workers’ compensation purposes, active control of the worker is not the focal point. Collins v. Charlotte (S.C. 2015) 412 S.C. 283, 772 S.E.2d 510, rehearing denied. Workers’ Compensation 351; Workers’ Compensation 352

Concept of “statutory employment” provides an exception to the general rule that coverage under the Workers’ Compensation Act requires the existence of an employer‑employee relationship. Collins v. Charlotte (S.C. 2015) 412 S.C. 283, 772 S.E.2d 510, rehearing denied. Workers’ Compensation 233

To determine whether the work performed by a subcontractor is a part of the owner’s business, so as to render employees of subcontractor statutory employees of owner for workers’ compensation purposes, the court must consider whether: (1) the activity of the subcontractor is an important part of the owner’s trade or business; (2) the activity performed by the subcontractor is a necessary, essential, and integral part of the owner’s business; or (3) the identical activity performed by the subcontractor has been performed by employees of the owner; if any of the tests is satisfied, the injured worker is considered the statutory employee of the owner. Collins v. Charlotte (S.C. 2015) 412 S.C. 283, 772 S.E.2d 510, rehearing denied. Workers’ Compensation 352

In determining whether employee is engaged in activity that is part of the owner’s trade, business, or occupation, as required to be statutory employee under workers’ compensation law, court applies three tests, and if the activity at issue meets even one of these three criteria, the injured employee qualifies as the statutory employee of the owner: (1) it is an important part of the owner’s business or trade; (2) it is a necessary, essential, and integral part of the owner’s business; or (3) it has previously been performed by the owner’s employees. Poch v. Bayshore Concrete Products/South Carolina, Inc. (S.C. 2013) 405 S.C. 359, 747 S.E.2d 757. Workers’ Compensation 187

To determine whether work performed by subcontractor is part of owner’s business, so as to render employees of subcontractor statutory employees of owner for workers’ compensation purposes, court must consider whether (1) the activity of the subcontractor is an important part of the owner’s trade or business, (2) the activity performed by the subcontractor is a necessary, essential, and integral part of the owner’s business, or (3) the identical activity performed by the subcontractor has been performed by employees of the owner; if any one of these tests is satisfied, the injured worker is considered the statutory employee of the owner. Fortner v. Thomas M. Evans Const. and Development, LLC (S.C.App. 2013) 402 S.C. 421, 741 S.E.2d 538. Workers’ Compensation 355

Due to the many different factual situations which arise, no easily applied formula can be laid down for the determination of whether or not work in a given case is a part of the general trade, business or occupation of the principal employer so as to make employer a statutory employer of worker under Workers’ Compensation Code; each case must be determined on its own facts. Fortner v. Thomas M. Evans Const. and Development, LLC (S.C.App. 2013) 402 S.C. 421, 741 S.E.2d 538. Workers’ Compensation 355

Worker is a “statutory employee” of owner under the Workers’ Compensation Act, and Act provides exclusive remedy against owner for worker’s work‑related injury, if any of the following three factors is shown: (1) the activity is an important part of the trade or business, (2) the activity is a necessary, essential and integral part of the business, or (3) the identical activity in question has been performed by employees of the principal employer. Johnson v. Jackson (S.C.App. 2012) 401 S.C. 152, 735 S.E.2d 664, certiorari denied. Workers’ Compensation 187

The statutory employee requirement is met for eligibility for workers’ compensation benefits if the injured worker’s activity (1) is an important part of the owner’s business or trade; (2) is a necessary, essential, and integral part of the owner’s business; or (3) has previously been performed by the owner’s employees. Collins v. Charlotte (S.C.App. 2012) 400 S.C. 50, 732 S.E.2d 630, affirmed 412 S.C. 283, 772 S.E.2d 510, rehearing denied. Workers’ Compensation 281

The rationale for the statutory employee doctrine that converts a conceded non‑employee into an employee within the meaning of the Workers’ Compensation Act is to prevent owners and contractors from subcontracting out their work to avoid liability for injuries incurred in the course of employment; the effect of the statutory employment provisions when brought into operation is to impose the absolute liability of an immediate employer upon the owner and/or general contractor, although it was not in law the immediate employer of the injured workman. Collins v. Charlotte (S.C.App. 2012) 400 S.C. 50, 732 S.E.2d 630, affirmed 412 S.C. 283, 772 S.E.2d 510, rehearing denied. Workers’ Compensation 351

Narrow exception to general rule that a higher tier contractor is considered the statutory‑employer of an employee of a lower tier contractor, such that higher tier contractor remains liable to pay benefits to an employee if he sustains a compensable injury allows liability to be transferred from the higher tier contractor to the Uninsured Employers’ Fund after the higher tier contractor has properly documented the lower tier contractor’s claim that it retains workers’ compensation insurance. Hopper v. Terry Hunt Const. (S.C. 2009) 383 S.C. 310, 680 S.E.2d 1, rehearing denied. Workers’ Compensation 357

For purposes of Workers’ Compensation Act, under which worker qualifies as statutory employee if worker is engaged in activity that is part of employer’s trade, business, or profession, a particular activity is part of the putative employer’s trade, business, or occupation if it (1) is an important part of the employer’s business or trade, (2) is a necessary, essential, and integral part of the employer’s business, or (3) has previously been performed by the employer’s employees. Cooke v. Palmetto Health Alliance (S.C.App. 2005) 367 S.C. 167, 624 S.E.2d 439, rehearing denied. Workers’ Compensation 281

Three tests are applied in determining whether the activity of an employee of a subcontractor is sufficient to make him a statutory employee of an owner within the meaning of Workers’ Compensation Act: (1) whether the activity is an important part of the owner’s business or trade, (2) whether the activity is a necessary, essential, and integral part of the owner’s trade, business, or occupation, or (3) whether the identical activity has previously been performed by the owner’s employees. Edens v. Bellini (S.C.App. 2004) 359 S.C. 433, 597 S.E.2d 863. Workers’ Compensation 352

In determining whether worker is engaged in activity that is part of owner’s trade, business, or occupation as would make owner a statutory employer under Workers’ Compensation Act, guidepost is whether that which is being done is or is not part of general trade, business or occupation of owner. Hancock v. Wal‑Mart Stores, Inc. (S.C.App. 2003) 355 S.C. 168, 584 S.E.2d 398, rehearing denied, certiorari denied. Workers’ Compensation 355

When a secondary employer is performing work that is an important part of the trade or business of the principal employer, an employee of the secondary employer will be deemed a “statutory employee” of the principal. Meyer v. Piggly Wiggly No. 24, Inc. (S.C.App. 1998) 331 S.C. 261, 500 S.E.2d 190, rehearing denied, certiorari granted, affirmed 338 S.C. 471, 527 S.E.2d 761. Workers’ Compensation 187

Whatever sort of activities might render someone a statutory employee, acting as a mere vendor is not one of them. Meyer v. Piggly Wiggly No. 24, Inc. (S.C.App. 1998) 331 S.C. 261, 500 S.E.2d 190, rehearing denied, certiorari granted, affirmed 338 S.C. 471, 527 S.E.2d 761. Workers’ Compensation 187

An employee of a secondary employer will be considered a “statutory employee” of the principal employer when the employee’s activities are a “necessary, essential and integral part” of the primary employer’s business. Meyer v. Piggly Wiggly No. 24, Inc. (S.C.App. 1998) 331 S.C. 261, 500 S.E.2d 190, rehearing denied, certiorari granted, affirmed 338 S.C. 471, 527 S.E.2d 761. Workers’ Compensation 187

An employee of a secondary employer will be viewed as a “statutory employee” of the principal employer when the employee does work ordinarily and customarily performed by the principal employer’s own employees. Meyer v. Piggly Wiggly No. 24, Inc. (S.C.App. 1998) 331 S.C. 261, 500 S.E.2d 190, rehearing denied, certiorari granted, affirmed 338 S.C. 471, 527 S.E.2d 761. Workers’ Compensation 187

To determine whether work performed by subcontractor is part of owner’s business, so as to render employees of subcontractor statutory employees of owner for workers’ compensation purposes, court must consider whether (1) activity of subcontractor is important part of owner’s trade or business, (2) activity performed by subcontractor is necessary, essential and integral part of owner’s business, or (3) identical activity performed by subcontractor has been performed by employees of owner; if any one of these tests is satisfied, injured worker of subcontractor is considered statutory employee of owner. Voss v. Ramco, Inc. (S.C.App. 1997) 325 S.C. 560, 482 S.E.2d 582, rehearing denied, certiorari granted. Workers’ Compensation 281

Since no easily applied formula can be laid down for deciding whether work in particular case meets test for determining whether worker is statutory employee whose exclusive remedy against employer is under Workers’ Compensation Act, each case must be decided on its own facts. Glass v. Dow Chemical Co. (S.C. 1997) 325 S.C. 198, 482 S.E.2d 49. Workers’ Compensation 187

In determining whether injured worker is considered statutory employee of owner for purposes of Workers’ Compensation Act, any doubts as to worker’s status are to be resolved in favor of coverage by Act. Neese v. Michelin Tire Corp. (S.C.App. 1996) 324 S.C. 465, 478 S.E.2d 91, certiorari denied. Workers’ Compensation 352

Under the Workers’ Compensation Act, the 3 factors that the court should look to in determining whether an activity constitutes work which is a part of the business are (1) whether the activity is an important part of the trade or business, (2) whether the activity is a necessary, essential, and integral part of the trade, business or occupation, and (3) whether the activity is performed by employees of the principal employer; if any one of the factors is shown, the worker performing the activity is a statutory employee. Glass v. Dow Chemical Co. (S.C.App. 1994) 316 S.C. 116, 447 S.E.2d 209, rehearing denied, affirmed 325 S.C. 198, 482 S.E.2d 49. Workers’ Compensation 279

In determining whether a worker is an employee within the meaning of Section 42‑1‑400 of the Workers’ Compensation Act, the court must consider whether (1) the activity is an important part of the employer’s trade or business, (2) the activity is a necessary, essential and integral part of the employer’s trade, business or occupation, and (3) the activity has been performed by employees of the employer; only one of these factors must be shown in order to consider the worker a statutory employee. Riden v. Kemet Electronics Corp. (S.C.App. 1993) 313 S.C. 261, 437 S.E.2d 156. Workers’ Compensation 352

Doubts about a worker’s status as a statutory employee are to be resolved in favor of including him and his employer under the Workers’ Compensation Law. Woodard v. Westvaco Corp. (S.C.App. 1993) 315 S.C. 329, 433 S.E.2d 890, rehearing denied, certiorari granted, opinion vacated, appeal dismissed 319 S.C. 240, 460 S.E.2d 392. Workers’ Compensation 230

A court must look to 3 factors to determine whether a particular activity constitutes “work which is a part of the business” within the meaning of Section 42‑1‑400 (1) whether the activity is an important part of the trade or business, (2) whether the activity is a necessary, essential, an integral part of the trade, business or occupation, and (3) whether the activity has been performed by employees of the principal employer; if any one of these factors is shown, the worker performing the work is a statutory employee. Woodard v. Westvaco Corp. (S.C.App. 1993) 315 S.C. 329, 433 S.E.2d 890, rehearing denied, certiorari granted, opinion vacated, appeal dismissed 319 S.C. 240, 460 S.E.2d 392. Workers’ Compensation 278

In determining whether an employee who bears no contractual relationship to an owner is, through employment by another person, the owner’s “statutory employee,” the test is “whether or not [the work] being done is or is not a part of the general trade, business or occupation of the owner.” The employee is to be included or excluded as a “statutory employee” depending on whether or not the person is performing or executing a part of the owner’s general business. Since there is no general rule for determining whether the work in a given case satisfies the prescribed test, each case must be decided on its own facts. However, doubts concerning the application of the prescribed test must be resolved in favor of inclusion of employers and employees under the Workers’ Compensation Act. Revels v. Hoechst Celanese Corp. (S.C.App. 1990) 301 S.C. 316, 391 S.E.2d 731.

When dealing with one who is not an employee of the owner but the employee of a person who is performing a part of the trade, business or occupation of the owner, the guidepost is whether or not that which is being done is or is not a part of the general trade, business or occupation of the owner. It matters not whether the employee under such circumstances be the employee of the owner or a subcontractor. He is excluded or included depending upon whether or not he is performing or executing a part of that general business. Hopkins v. Darlington Veneer Co. (S.C. 1946) 208 S.C. 307, 38 S.E.2d 4. Workers’ Compensation 354

The work done by a contractor was held a part of the “owner’s” business, trade or occupation so as to bring the injured employee of the contractor within the provisions of this section [Code 1962 Section 72‑111]. Marchbanks v. Duke Power Co. (S.C. 1939) 190 S.C. 336, 2 S.E.2d 825.

10. —— Construction, statutory employees

It would defeat the purpose of the Act to make the prime mover of an enterprise liable to pay compensation for injuries suffered in the work of maintenance or repair, whether he is negligent or not, but to exempt him in the more important and more extensive field of new construction. Blue Ridge Rural Electric Co‑operative, Inc. v Byrd (1956, CA4 SC) 238 F2d 346, revd on other grounds in 356 US 525, 2 L Ed 2d 953, 78 S Ct 893, reh den 357 US 933, 2 L Ed 2d 1375, 78 S Ct 1366 and (ovrld on other grounds Hanna v Plumer, 380 US 460, 14 L Ed 2d 8, 85 S Ct 1136, 9 FR Serv 2d 1.3, Case 1). MacMullen v South Carolina Electric & Gas Co. (1963, CA4 SC) 312 F2d 662, cert den 373 US 912, 10 L Ed 2d 413, 83 S Ct 1302.

Construction company was worker’s statutory employer for purposes of workers’ compensation; pressure washing performed by worker was an important part of the construction company’s business, and company’s own employees pressure washed properties on a consistent basis. Fortner v. Thomas M. Evans Const. and Development, LLC (S.C.App. 2013) 402 S.C. 421, 741 S.E.2d 538. Workers’ Compensation 355

Finding that construction company, which subcontracted pressure washing work, was the statutory employer of worker who performed pressure washing for purposes of workers’ compensation did not detrimentally expand the scope of the statutory employer doctrine. Fortner v. Thomas M. Evans Const. and Development, LLC (S.C.App. 2013) 402 S.C. 421, 741 S.E.2d 538. Workers’ Compensation 346

Work done by construction subcontractors, hired to replace facade of building containing chemical manufactured by chemical company, was not important part of trade related to company’s business of manufacturing chemicals for purposes of determining whether subcontractors were statutory employees of company whose exclusive remedy against company was under Workers’ Compensation Act. Glass v. Dow Chemical Co. (S.C. 1997) 325 S.C. 198, 482 S.E.2d 49. Workers’ Compensation 270

Work done by construction subcontractors hired to replace facade of building containing chemical manufactured by company for chemical company was not necessary, integral, or essential part of company’s business of manufacturing chemicals for purposes of determining whether subcontractors were statutory employees of company whose exclusive remedy against company was under Workers’ Compensation Act. Glass v. Dow Chemical Co. (S.C. 1997) 325 S.C. 198, 482 S.E.2d 49. Workers’ Compensation 270

Work done by construction subcontractors hired to replace facade of building containing chemical manufactured by chemical company was not work that employees for company regularly engaged in for purposes of determining whether subcontractors were statutory employees of company whose exclusive remedy against company was under Workers’ Compensation Act. Glass v. Dow Chem. Glass v. Dow Chemical Co. (S.C. 1997) 325 S.C. 198, 482 S.E.2d 49. Workers’ Compensation 270

In an action arising from injuries sustained by a subcontractor’s workers at a construction site, the defendant, who was a manufacturer of a mortar additive, could not assert that it stood in the shoes of the owner of the property, and that the workers were therefore statutory employees under The Workers’ Compensation Act; even if such an equitable argument could be made, the property owner could not assert such a defense since it was not in the construction business. Glass v. Dow Chemical Co. (S.C.App. 1994) 316 S.C. 116, 447 S.E.2d 209, rehearing denied, affirmed 325 S.C. 198, 482 S.E.2d 49.

In an action arising from injuries sustained by a subcontractor’s workers, the defendant, who was a manufacturer of a mortar additive, could not assert a defense on the ground that the workers, who were injured by fumes from the additives, were statutory employees under the Workers’ Compensation Act; although the manufacturer was obliged by a settlement agreement to repair the building in question, construction was not the “trade, business, or occupation” of the manufacturer so as to allow a defense under the Act. Glass v. Dow Chemical Co. (S.C.App. 1994) 316 S.C. 116, 447 S.E.2d 209, rehearing denied, affirmed 325 S.C. 198, 482 S.E.2d 49.

If a business by its size and nature is accustomed to carrying on a more or less ongoing program of construction, perhaps having a construction division, or has handled its own construction in the past, then, in determining the existence of a workers compensation employer‑employee relationship, construction work delegated to a contractor may be considered a part of its trade or business. Raines v. Gould, Inc. (S.C.App. 1986) 288 S.C. 541, 343 S.E.2d 655. Workers’ Compensation 355

Ordinarily, in determining worker’s compensation employee‑employer relationship, construction work, such as building a factory structure or making electrical installations, is considered outside the trade or business of a manufacturer. Raines v. Gould, Inc. (S.C.App. 1986) 288 S.C. 541, 343 S.E.2d 655. Workers’ Compensation 354

Worker’s Compensation Act did not provide exclusive remedy for worker injured while employed by a subcontractor to install an electrical system for a plant being constructed for a manufacturer by a general contractor, since the electrical installation was not part of the trade or business of the manufacturer which was in the business of manufacturing and selling of batteries and related products and, although the manufacturer had been involved in the construction of numerous facilities on property which it owned or leased and managed, the manufacturer did not have a construction division and none of the construction work was performed by its regular employees but, rather, the manufacturer merely prepared the specific designs for certain parts of the facilities, or oversaw such designs, approved engineering plans and, in some instances, provided supervisory personnel to provide general assistance in the contracting of the contractors and subcontractors and of coordinating their activities. Raines v. Gould, Inc. (S.C.App. 1986) 288 S.C. 541, 343 S.E.2d 655.

Construction work performed for owner‑developer of property was not part of his trade, business or occupation, and he was therefore not a statutory employer entitled to immunity under this section. Wilson v. Duke Power Co. (S.C. 1979) 273 S.C. 610, 258 S.E.2d 101.

11. —— Corporations, statutory employees

Employees of a corporate employer’s sister corporation were “statutory employees” of the corporate employer under the Workers’ Compensation Act where both corporations participated in the sale of the corporate employer’s product, the vice‑president of the corporate employer also served as the sales manager of the sister corporation, the employees of the sister corporation regularly used the corporate employer’s airplane and pilot to travel to South Carolina for business, the sister corporation’s sales people regularly travelled with representatives of the corporate employer, and the corporate employer performed the same business activities in South Carolina as the sister corporation. Ost v. Integrated Products, Inc. (S.C. 1988) 296 S.C. 241, 371 S.E.2d 796. Workers’ Compensation 215

12. —— Manufacturing, statutory employees

A contractor’s employee who participated in the removal of obsolete equipment to make room for new equipment in a paper mill, and who was injured while engaged in the removal, was a statutory employee of the mill under the provisions of Section 42‑1‑400, where the removal operation was part of the trade, business or occupation of the mill. Furthermore, the employee’s exclusive remedy was under the provisions of Sections 42‑1‑540 and 42‑5‑10. Wright v. Westvaco Corp. (D.C.S.C. 1981) 522 F.Supp. 775. Workers’ Compensation 288; Workers’ Compensation 2164

Demolition to remove obsolete equipment to make room for new equipment directly involved in paper mill’s paper‑making process and to facilitate maintenance of existing equipment is part of trade, business, or occupation of paper mill, and employee of subcontractor injured while engaged in such work is employee of paper mill under South Carolina Workmen’s Compensation Law. Wright v. Westvaco Corp. (D.C.S.C. 1981) 522 F.Supp. 775. Workers’ Compensation 288; Workers’ Compensation 2164

Distributor’s activities were part of manufacturer’s trade, business or occupation, and therefore injured salesperson employed by distributor was statutory employee of manufacturer for workers’ compensation purposes; selling equipment it manufactured was essential part of manufacturer’s business, manufacturer made these sales through distributors, and manufacturer, by selling its equipment to distributor on consignment, retained title to equipment until it was ultimately sold in field by one of distributor’s salespersons. Voss v. Ramco, Inc. (S.C.App. 1997) 325 S.C. 560, 482 S.E.2d 582, rehearing denied, certiorari granted. Workers’ Compensation 283

A subcontractor was a statutory employee within the meaning of the Workers’ Compensation Act, pursuant to Section 42‑1‑400, where the subcontractor was a self‑employed welder and the sole proprietor of a business hired to repair a machine used in the employer’s business operation, and the subcontractor was fatally injured while repairing the machine. Smith v. T.H. Snipes & Sons, Inc. (S.C. 1991) 306 S.C. 289, 411 S.E.2d 439.

The provisions of Sections 42‑1‑400, et seq., are applicable only if the work being performed by a subcontractor’s employee was a part of the contractor’s “trade business or occupation.” Where the record contained conflicting assertions on this point, the contractor was not entitled to a summary judgment in a tort action brought by an employee of its subcontractor. Bigham v. Nassau Recycle Corp. (S.C.App. 1985) 285 S.C. 200, 328 S.E.2d 663.

Where a mill hired an independent contractor to paint its water tank which was used as a protection against fire and supplied the necessary water needed in the operation and pursuit of trade of the mill and two of the employees of the contractor were injured while working on the tank, it was held that the employees could recover under this section [Code 1962 Section 72‑111] as the work done was a part of the trade and business of the mill. Boseman v. Pacific Mills (S.C. 1940) 193 S.C. 479, 8 S.E.2d 878.

13. —— Sales, statutory employees

A millinery department operated in a general retail department store by a licensee is part of the trade, business or occupation of the department store owner within the purview of this Title. Corollo v. S. S. Kresge Co. (C.A.4 (S.C.) 1972) 456 F.2d 306, certiorari denied 92 S.Ct. 2440, 407 U.S. 911, 32 L.Ed.2d 686.

Worker employed by store’s vendor to set up and assemble merchandise in store was statutory employee of store, whose sole remedy against store for work‑related injury was workers’ compensation; worker’s duties were important part of store’s business in that assembled items sold better, his assembly of merchandise on regular basis was integral to regular operations, and same assembly duties were often performed by store’s regular employees. Hancock v. Wal‑Mart Stores, Inc. (S.C.App. 2003) 355 S.C. 168, 584 S.E.2d 398, rehearing denied, certiorari denied. Workers’ Compensation 2084

Route salesman for wholesale bakery was not grocery store’s “statutory employee,” and thus, Workers’ Compensation Act did not preclude salesman’s tort action against store to recover for injuries he suffered when he slipped and fell in store while delivering products for bakery; although salesman’s stocking and cleaning of his display may have incidentally benefitted store, these activities related only to sale of bakery’s goods and were insubstantial in context of store’s general business. Meyer v. Piggly Wiggly No. 24, Inc. (S.C. 2000) 338 S.C. 471, 527 S.E.2d 761. Workers’ Compensation 283

Route salesman for wholesale bakery was not grocery store’s “statutory employee,” and thus, Workers’ Compensation Act did not preclude salesman’s tort action against store to recover for injuries he suffered when he slipped and fell in store while delivering products for bakery; although bakery, through salesman, incidentally performed some duties which would ordinarily have been responsibility of store’s employees, such as ordering necessary grocery items, arranging for their delivery, and properly stocking and displaying them, nature of contractual relationship between bakery and store was one of vendor‑vendee, rather than contractor‑subcontractor. Meyer v. Piggly Wiggly No. 24, Inc. (S.C.App. 1998) 331 S.C. 261, 500 S.E.2d 190, rehearing denied, certiorari granted, affirmed 338 S.C. 471, 527 S.E.2d 761. Workers’ Compensation 2161

Salesperson working for distributor was employee, rather than independent contractor, of distributor and, therefore, was statutory employee of manufacturer for workers’ compensation purposes to extent distributor’s activities were part of manufacturer’s trade, business or occupation; distributor directed where salesperson worked as well as how and to whom salesperson sold products, and distributor had ability to terminate salesperson. Voss v. Ramco, Inc. (S.C.App. 1997) 325 S.C. 560, 482 S.E.2d 582, rehearing denied, certiorari granted. Workers’ Compensation 316

A shopping mall employee was a statutory employee of the corporation which owned the mall, even though the employee was hired and paid by a management company, where the mall was the corporation’s sole business, and the work being performed by the management company was essential to its operation. Carter v. Florentine Corp., Inc. (S.C. 1992) 310 S.C. 228, 423 S.E.2d 112. Workers’ Compensation 316

14. —— Transportation, statutory employees

An employee of a subcontractor was a statutory employee pursuant to Section 42‑1‑400, where the trucking of goods from manufacturers plant to its customers is an essential and important part of the manufacturer’s trade and a necessary and integral part of its business; the driver, an employee of the subcontractor, was involved in the transportation of goods from the manufacturer’s plant to the manufacturer’s customers. Furthermore, the owner has in the past equipped, managed, maintained and run its own trucking division. Carrier v. Westvaco Corp., 1992, 806 F.Supp. 1242, affirmed 46 F.3d 1122.

For purposes of exclusive remedy provision (Section 42‑1‑540), a truck driver, who worked for independent carrier used by manufacturer, was “statutory employee” of manufacturer, where driver was injured while standing on concrete pier waiting for his truck to be loaded at manufacturer’s plant, and where, prior to using contract‑type carriers for the transportation of its goods to customers, manufacturer had equipped and maintained its own trucking division. Carrier v. Westvaco Corp., 1992, 806 F.Supp. 1242, affirmed 46 F.3d 1122. Workers’ Compensation 331

An employee of a subcontractor was a statutory employee pursuant to Section 42‑1‑400, where the trucking of goods from manufacturers plant to its customers is an essential and important part of the manufacturer’s trade and a necessary and integral part of its business; the driver, an employee of the subcontractor, was involved in the transportation of goods from the manufacturer’s plant to the manufacturer’s customers. Furthermore, the owner has in the past equipped, managed, maintained and run its own trucking division. Carrier v. Westvaco Corp., 1992, 806 F.Supp. 1242, affirmed 46 F.3d 1122.

The acquisition, by lease or purchase, the rotation, changing, cross‑changing, inventorying and use of tires is a part of the trade, business and occupation of a trucking company. Mack v. R. C. Motor Lines, Inc. (D.C.S.C. 1973) 365 F.Supp. 416.

Emergency repair work on engine of bus company being done by employee of a garage at the time of an injury was a part of bus company’s trade, business or occupation, although the bus company has its own repair shOp Berry v. Atlantic Greyhound Lines, 1939, 30 F.Supp. 188.

Temporary worker who was injured while packaging and loading equipment for transportation company specializing in shipping high‑value technological equipment was “statutory employee” of transportation company under Workers’ Compensation Act, and thus the Act provided worker’s exclusive remedy against transportation company, where worker performed the same tasks as direct employees of transportation company, and packaging and loading equipment were important, integral, and necessary to transportation company’s business. Johnson v. Jackson (S.C.App. 2012) 401 S.C. 152, 735 S.E.2d 664, certiorari denied. Workers’ Compensation 2165; Workers’ Compensation 2168.1(2)

Delivery driver employed by transportation services contractor was “statutory employee” of contractor’s client at time of accident while returning to South Carolina after making delivery for client, within meaning of Workers’ Compensation Act, even though contract between contractor and client provided that client would pay contractor per mile for one‑way delivery and not driver’s return trip, and regardless of client’s lack of control over driver upon return trip, where client’s general manager admitted that deliveries like one driver made were important and necessary part of its business. Collins v. Charlotte (S.C.App. 2012) 400 S.C. 50, 732 S.E.2d 630, affirmed 412 S.C. 283, 772 S.E.2d 510, rehearing denied. Workers’ Compensation 293

Pilot, who was employed by helicopter transportation company, was not a statutory employee of hospital, and thus exclusive remedy provision of Workers’ Compensation Act did not apply to pilot’s personal injury action that was brought against hospital and hospital’s employee, although air transportation of patients helped facilitate hospital’s treatment of critically injured patients; hospital was in business of providing health care, not transportation, helicopter service was not necessary, essential, or integral to hospital’s operation, hospital did not have Federal Aviation Administration (FAA) certificate, and hospital had never directly employed helicopter pilots. Cooke v. Palmetto Health Alliance (S.C.App. 2005) 367 S.C. 167, 624 S.E.2d 439, rehearing denied. Workers’ Compensation 2161

Truck driver employed by common carrier, who was injured while transporting utility poles for utility pole manufacturer, was not a “statutory employee” of manufacturer, and thus, his tort action against manufacturer was not barred by exclusive remedy provision of Workers’ Compensation Act, where truck was loaded by manufacturer’s employees, none of its employees participated in delivery of its products beyond loading stage, and truck was not owned or operated by manufacturer. Olmstead v. Shakespeare (S.C. 2003) 354 S.C. 421, 581 S.E.2d 483. Workers’ Compensation 2165

The surviving spouse of a truck driver killed while hauling lumber sufficiently alleged that he was a statutory employee of the contractor who had hired him to haul lumber as an independent contractor where, on her claim for workers’ compensation benefits, she alleged that he was an employee of the contractor. Smith v. Squires Timber Co. (S.C. 1993) 311 S.C. 321, 428 S.E.2d 878, rehearing denied.

The finding by a workers’ compensation commissioner that a truck driver was an independent contractor, without a corresponding finding that the driver had elected to receive benefits pursuant to Section 42‑1‑130, implicitly held that the driver was not a statutory employee of the contractor who had hired him, and thus the issue of his status as a statutory employee was preserved for review. Smith v. Squires Timber Co. (S.C. 1993) 311 S.C. 321, 428 S.E.2d 878, rehearing denied.

An employee of a transport company was a “statutory employee” of a chemical distributor when he was injured at the distributor’s distribution terminal while assisting in the loading of chemicals into the transport company’s tanker. The work being performed by the employee—checking the levels of the chemicals being loaded into the tanker—was a part of the chemical distributor’s general business. The distribution of chemicals necessarily involves their transportation, and before they can be transported the chemicals must first be pumped or loaded into tankers. The loading of chemicals into a tanker requires that someone monitor the amount of chemicals being pumped into the tanker’s compartments, the very work that the employee was performing when he received his injuries. By engaging in that activity, the employee participated in the loading operation, which is an activity that normally involves an employee of the distributor, and in so doing, the employee performed work that was part of the distributor’s general business and its obvious routine. Revels v. Hoechst Celanese Corp. (S.C.App. 1990) 301 S.C. 316, 391 S.E.2d 731.

15. Governmental immunity

United States was statutory employer under this section and entitled to immunity in personal injury suit under Federal Tort Claims Act where, by requiring sub‑contractor to provide workmen’s compensation insurance for its employees, it complied with every duty that would be required of a private person in an analogous situation. Watkins v. U. S. (D.C.S.C. 1979) 479 F.Supp. 785.

“Upstream” subcontractors were statutory employers of an employee of a sub‑sub‑contractor under the Workers’ Compensation Act, and thus were immune from tort liability. Brittingham v. Williams Sign Erectors, Inc. (S.C.App. 1989) 299 S.C. 259, 384 S.E.2d 319. Workers’ Compensation 350

16. Estoppel

A workers’ compensation insurance carrier was not estopped from denying coverage to the surviving spouse of a truck driver, who was killed while hauling timber pursuant to a subcontract with the logging company covered by the carrier, where the evidence failed to show that the carrier had charged a premium to cover the driver’s activities. Smith v. Squires Timber Co. (S.C.App. 1992) 308 S.C. 102, 417 S.E.2d 101, rehearing denied, certiorari granted in part, reversed 311 S.C. 321, 428 S.E.2d 878.

17. Questions of law

Whether a worker is a statutory employee under the Workers’ Compensation Act is a question of law for the court. Glass v. Dow Chemical Co. (S.C.App. 1994) 316 S.C. 116, 447 S.E.2d 209, rehearing denied, affirmed 325 S.C. 198, 482 S.E.2d 49. Workers’ Compensation 1939.11(3)

Whether a worker is a statutory employee is a question of law for the court. Woodard v. Westvaco Corp. (S.C.App. 1993) 315 S.C. 329, 433 S.E.2d 890, rehearing denied, certiorari granted, opinion vacated, appeal dismissed 319 S.C. 240, 460 S.E.2d 392. Workers’ Compensation 1707

18. Sufficiency of evidence

Substantial evidence supported Workers’ Compensation Commission’s finding that general contractor failed to satisfy statute governing transfer of liability to Uninsured Employers’ Fund with respect to injury of subcontractor’s employee; certificate of workers’ compensation insurance that subcontractor submitted to general contractor contained no information regarding the coverage that policy provided, the deductible amount, or the project to which policy applied, and certificate reflected that policy had expired at time subcontractor’s employee was injured. Hopper v. Terry Hunt Const. (S.C. 2009) 383 S.C. 310, 680 S.E.2d 1, rehearing denied. Workers’ Compensation 359

19. Review

Determination of whether a workers’ compensation claimant is a statutory employee is jurisdictional and, therefore, the question on appeal is one of law. Collins v. Charlotte (S.C. 2015) 412 S.C. 283, 772 S.E.2d 510, rehearing denied. Workers’ Compensation 1939.11(3)

Determination of whether a worker is a statutory employee, for purposes of workers’ compensation, is jurisdictional, and therefore question on appeal is one of law, and appellate court reviews entire record and decides jurisdictional facts in accord with preponderance of the evidence. Ferguson v. New Hampshire Ins. Co. (S.C.App. 2015) 412 S.C. 203, 771 S.E.2d 851, rehearing denied, certiorari denied. Workers’ Compensation 187; Workers’ Compensation 1939.11(3)

The trial court should have resolved the conflicts in the evidence and determined the fact of whether a contractor‑defendant was performing a part of the “trade, business or occupation” of the owner‑defendant and, therefore, whether employee’s remedy was exclusively under the Workmen’s Compensation Law. Adams v. Davison‑Paxon Co. (S.C. 1957) 230 S.C. 532, 96 S.E.2d 566.

**SECTION 42‑1‑410.** Liability of contractor to workmen of subcontractor.

When any person, in this section and Sections 42‑1‑420 to 42‑1‑450 referred to as “contractor,” contracts to perform or execute any work for another person which is not a part of the trade, business or occupation of such other person and contracts with any other person (in this section and Sections 42‑1‑420 to 42‑1‑450 referred to as “subcontractor”) for the execution or performance by or under the subcontractor of the whole or any of the work undertaken by such contractor, the contractor shall be liable to pay to any workman employed in the work any compensation under this title which he would have been liable to pay if that workman had been immediately employed by him.

HISTORY: 1962 Code Section 72‑112; 1952 Code Section 72‑112; 1942 Code Section 7035‑22; 1936 (39) 1231.

CROSS REFERENCES

Definition of “employee”, see Section 42‑1‑130.

“Entire work force”, within meaning of provisions regulating staff leasing services, includes persons considered employees under this section, see Section 40‑68‑10.

Library References

Workers’ Compensation 344 to 361.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 185, 238 to 257.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 105:17, Owners and Contractors.

LAW REVIEW AND JOURNAL COMMENTARIES

Employer‑Employee Relationship. 25 S.C. L. Rev. 510.

Independent Contractor in South Carolina. 4 SCLQ 150, 168 (1951).

NOTES OF DECISIONS

In general 1

Employer‑employee relationship 2

Exclusive remedy 7

Jurisdiction 6

Liability of principal contractor 4

Presumptions and burden of proof 8

Statutory employees 5

Subcontractors 3

1. In general

Concept of “statutory employment” provides an exception to the general rule that coverage under the Workers’ Compensation Act requires the existence of an employer‑employee relationship. Collins v. Charlotte (S.C. 2015) 412 S.C. 283, 772 S.E.2d 510, rehearing denied. Workers’ Compensation 233

The effect of statutory employment provisions of the Workers’ Compensation Act when brought into operation is to impose the absolute liability of an immediate employer upon the owner and/or general contractor although it was not in law the immediate employer of the injured workman. Fortner v. Thomas M. Evans Const. and Development, LLC (S.C.App. 2013) 402 S.C. 421, 741 S.E.2d 538. Workers’ Compensation 351; Workers’ Compensation 352

Under statutory employment doctrine, employee of subcontractor may look to an upstream employer for benefits without regard to whether the subcontractor has workers’ compensation coverage. Miller v. Lawrence Robinson Trucking (S.C.App. 1998) 333 S.C. 576, 510 S.E.2d 431, rehearing denied, certiorari denied. Workers’ Compensation 351

Upstream contractor who is liable to pay workers’ compensation benefits to subcontractor’s employee under statutory employment doctrine may either bring a separate action for indemnification or join the immediate employer as a defendant in the action brought by the employee against the contractor. Miller v. Lawrence Robinson Trucking (S.C.App. 1998) 333 S.C. 576, 510 S.E.2d 431, rehearing denied, certiorari denied. Workers’ Compensation 1196; Workers’ Compensation 2142.20

Under statutory employment doctrine, an employee of a subcontractor may recover workers’ compensation benefits from either his employer or an upstream contractor, but not from both. Miller v. Lawrence Robinson Trucking (S.C.App. 1998) 333 S.C. 576, 510 S.E.2d 431, rehearing denied, certiorari denied. Workers’ Compensation 344; Workers’ Compensation 351

Effect of statutory employment provisions of Workers’ Compensation Act is to impose the absolute liability of an immediate employer upon the owner and/or general contractor, although it was not in law the immediate employer of the injured workman; these provisions should not be interpreted to mean the contractor’s liability arises only if the immediate employer fails to provide compensation. Miller v. Lawrence Robinson Trucking (S.C.App. 1998) 333 S.C. 576, 510 S.E.2d 431, rehearing denied, certiorari denied. Workers’ Compensation 351; Workers’ Compensation 352

The primary purpose of this section [Code 1962 Section 72‑112] is to protect the employees of any subcontractors who are not financially responsible. Younginer v. J. A. Jones Const. Co. (S.C. 1949) 215 S.C. 135, 54 S.E.2d 545.

While the language of this section [Code 1962 Section 72‑112] is plain and unambiguous, there are so many different factual situations which may arise that no easily applied formula can be laid down for the determination of all cases. Smith v. Fulmer (S.C. 1941) 198 S.C. 91, 15 S.E.2d 681.

It is easily conceivable that a contractor may let a part of the work to be done to others who are financially irresponsible, and that an employee of such subcontractor who is injured while doing the work might be left without remedy. It is hence the clear purpose of this section [Code 1962 Section 72‑112] to make the contractor, the person who originally contracted to have the work done, liable to the subcontractor’s employee so injured. Smith v. Fulmer (S.C. 1941) 198 S.C. 91, 15 S.E.2d 681.

By this section [Code 1962 Section 72‑112] it was intended that where the work was not a part of the owner’s trade or business, the principal contractor would be liable in compensation to all employees of subcontractors doing such work. Marchbanks v. Duke Power Co. (S.C. 1939) 190 S.C. 336, 2 S.E.2d 825.

2. Employer‑employee relationship

In determining whether a worker is a statutory employee for workers’ compensation purposes, courts consider the following three factors: (1) whether the activity is an important part of the trade or business, (2) whether the activity is a necessary, essential and integral part of the business, and (3) whether the identical activity in question has been performed by employees of the principal employer. Poch v. Bayshore Concrete Products/South Carolina, Inc. (S.C.App. 2009) 386 S.C. 13, 686 S.E.2d 689, rehearing denied, certiorari granted, affirmed as modified 405 S.C. 359, 747 S.E.2d 757. Workers’ Compensation 281

Partnership which hired management firm to oversee management of plantation was not engaged in “business” within meaning of Workers’ Compensation Act, and, thus, was not statutory employer of firm’s employee for purposes of exclusive remedy provisions, where plantation was used primarily for personal enjoyment of partners, it existed mainly as tax write‑off, and had never entertained a paying guest. Harrell v. Pineland Plantation, Ltd. (S.C.App. 1997) 329 S.C. 185, 494 S.E.2d 123, rehearing denied, certiorari granted, affirmed 337 S.C. 313, 523 S.E.2d 766. Workers’ Compensation 212; Workers’ Compensation 2162

Partnership who hired management company to oversee plantation could not claim statutory employer immunity under exclusivity remedy provision of Workers’ Compensation Act for management company employee’s injuries, where partnership did not provide any form of workers’ compensation insurance to employee. Harrell v. Pineland Plantation, Ltd. (S.C.App. 1997) 329 S.C. 185, 494 S.E.2d 123, rehearing denied, certiorari granted, affirmed 337 S.C. 313, 523 S.E.2d 766. Workers’ Compensation 212

In an action by welders injured during the repair of a building, the defendant, who was the project engineer, could not assert that it was the statutory employer of the welders where there was no showing that the engineer was the general contractor for the project. Glass v. Dow Chemical Co. (S.C.App. 1994) 316 S.C. 116, 447 S.E.2d 209, rehearing denied, affirmed 325 S.C. 198, 482 S.E.2d 49.

“Working partners” are not employees. Marlow v. E. L. Jones & Son, Inc. (S.C. 1966) 248 S.C. 568, 151 S.E.2d 747.

Before the provisions of the Workmen’s Compensation Act can become applicable, the relation of master and servant, or employer and employee, or some appointment must exist. This is the initial fact to be established. Marlow v. E. L. Jones & Son, Inc. (S.C. 1966) 248 S.C. 568, 151 S.E.2d 747. Workers’ Compensation 233

3. Subcontractors

The “statutory employee doctrine” converts conceded non‑employees into employees for purposes of the Workers’ Compensation Act. Collins v. Charlotte (S.C. 2015) 412 S.C. 283, 772 S.E.2d 510, rehearing denied. Workers’ Compensation 187

To determine whether the work performed by a subcontractor is a part of the owner’s business, so as to render employees of subcontractor statutory employees of owner for workers’ compensation purposes, the court must consider whether: (1) the activity of the subcontractor is an important part of the owner’s trade or business; (2) the activity performed by the subcontractor is a necessary, essential, and integral part of the owner’s business; or (3) the identical activity performed by the subcontractor has been performed by employees of the owner; if any of the tests is satisfied, the injured worker is considered the statutory employee of the owner. Collins v. Charlotte (S.C. 2015) 412 S.C. 283, 772 S.E.2d 510, rehearing denied. Workers’ Compensation 352

“Upstream” subcontractors were statutory employers of an employee of a sub‑sub‑contractor under the Workers’ Compensation Act, and thus were immune from tort liability. Brittingham v. Williams Sign Erectors, Inc. (S.C.App. 1989) 299 S.C. 259, 384 S.E.2d 319. Workers’ Compensation 350

An employee of a subcontractor is a statutory employee of an owner only if the work being performed by the subcontractor is a part of the owner’s trade, business or occupation. Henderson v. Gould, Inc. (S.C.App. 1986) 288 S.C. 261, 341 S.E.2d 806. Workers’ Compensation 354

Whether the Worker’s Compensation Act provides the exclusive remedy for an injured employee of a subcontractor depends upon whether the work being performed by the subcontractor at the time of the injury is a part of the owner’s trade, business or occupation. Henderson v. Gould, Inc. (S.C.App. 1986) 288 S.C. 261, 341 S.E.2d 806.

A supplier of ready‑mixed concrete is not a subcontractor but is a vendor, and the relevant provisions of the workman’s compensation acts do not apply. Wilson v. Daniel Intern. Corp. (S.C. 1973) 260 S.C. 548, 197 S.E.2d 686.

A supplier of ready‑mixed concrete is a materialman, not a subcontractor engaged in the execution of part of the work undertaken by the contractor. Wilson v. Daniel Intern. Corp. (S.C. 1973) 260 S.C. 548, 197 S.E.2d 686.

The wording of this section [Code 1962 Section 72‑112] clearly evinces an intention on the part of the legislature not to include therein a subcontractor or independent contractor, but only workmen or employees of either the “owner” or of the subcontractor; and therefore the legal maxim, expressio unius est exclusio alterius, is here applicable. Marlow v. E. L. Jones & Son, Inc. (S.C. 1966) 248 S.C. 568, 151 S.E.2d 747.

Where roofers set their own hours, were not subject to supervision or control as to the manner of executing the work, hired additional personnel at their discretion, and were compensated at a fixed rate per square, and contractor looked only to the end result of their work, the roofing jobs were performed as subcontracts and roofers were not employees of contractor within the meaning of this section [Code 1962 Section 72‑112]. Marlow v. E. L. Jones & Son, Inc. (S.C. 1966) 248 S.C. 568, 151 S.E.2d 747.

Subcontractor is not a “workman” or employee within the terms of this section [Code 1962 Section 72‑112]. McDowell v. Stilley Plywood Co. (S.C. 1947) 210 S.C. 173, 41 S.E.2d 872.

4. Liability of principal contractor

Whatever a contractor engages to do is his work whether he executes it through employees immediately or remotely employed by him. Chavis v. E. I. Du Pont De Nemours & Co. (C.A.4 (S.C.) 1960) 283 F.2d 929, certiorari denied 81 S.Ct. 748, 365 U.S. 836, 5 L.Ed.2d 745.

Contractor remained an owner and operator of garage building business after he sold his interest in business to other operator at least until the time of claimant’s injury, and thus, contractor was jointly liable with other operator of business to claimant as his statutory employer for purposes of workers’ compensation claim; because contractor was a licensed contractor, and other operator was not licensed, contractor was required to stay involved in the business so that operator could obtain necessary building permits, and the building permit for garage that claimant was working on bore contractor’s name. Pilgrim v. Eaton (S.C.App. 2010) 391 S.C. 38, 703 S.E.2d 241. Workers’ Compensation 201

Under the Workers’ Compensation Act, absent documentation that a contractor or subcontractor has represented himself to a higher tier subcontractor, contractor, or project owner as having workers’ compensation insurance at the time the contractor or subcontractor was engaged to perform work, the employee of the sub‑contractor may look to the prime contractor for workers’ compensation benefits without regard to whether the sub‑contractor is covered by a workers’ compensation insurance policy. Barton v. Higgs (S.C. 2009) 381 S.C. 367, 674 S.E.2d 145, rehearing denied. Workers’ Compensation 351

General contractor’s failure to collect a signed certificate of workers’ compensation insurance form from subcontractor rendered general contractor the statutory employer of subcontractor’s claimant employee, and liable for claimant’s compensable injury, thus precluding transfer of liability to Uninsured Employers’ Fund. Barton v. Higgs (S.C. 2009) 381 S.C. 367, 674 S.E.2d 145, rehearing denied. Workers’ Compensation 359

Under the Workers’ Compensation Act, the prime contractor is liable for workers’ compensation where the subcontractor’s employee is injured on the job. Freeman Mechanical, Inc. v. J.W. Bateson Co., Inc. (S.C. 1994) 316 S.C. 95, 447 S.E.2d 197. Workers’ Compensation 357

The employee of a subcontractor may look to the prime contractor for workers’ compensation benefits without regard to whether the subcontractor is covered by a workers’ compensation insurance policy. Freeman Mechanical, Inc. v. J.W. Bateson Co., Inc. (S.C. 1994) 316 S.C. 95, 447 S.E.2d 197. Workers’ Compensation 351

Under the workers’ compensation scheme, the subcontractor is primarily liable and the prime contractor secondarily liable for workers’ compensation benefits to the subcontractor’s employee. Freeman Mechanical, Inc. v. J.W. Bateson Co., Inc. (S.C. 1994) 316 S.C. 95, 447 S.E.2d 197. Workers’ Compensation 346

This section [Code 1962 Section 72‑112] raises the employer‑employee relationship for workmen’s compensation purposes between the general contractor and the employees of a subcontractor when the latter is engaged in the execution or performance of any part of the work undertaken by such general contractor. Wilson v. Daniel Intern. Corp. (S.C. 1973) 260 S.C. 548, 197 S.E.2d 686. Workers’ Compensation 351

Where a glass company’s employee was injured while a plate glass window was being removed prior to the repair of the wood beneath it, the fact that the glass company billed the estate owning the building for its work and was paid directly by the estate, but this was done after claimant’s accidental injury is not controlling. It is more significant that the removal and replacement of the plate glass was part of the work which a construction company undertook to do for the estate. Thus, the factual finding of the Commission, affirmed by the circuit court, that the construction company was general contractor and the glass company subcontractor was reasonably supported by the evidence. Conner v. Conway Glass & Paint Co. (S.C. 1964) 244 S.C. 294, 136 S.E.2d 772.

The liability imposed upon the principal contractor by the terms of this section [Code 1962 Section 72‑112] is secondary in nature. Other provisions of this section [Code 1962 Section 72‑112] expressly give the principal contractor the right of indemnity from his subcontractor in the event he is required to pay compensation to an employee of a subcontractor; and when the principal contractor is sued by a workman of a subcontractor, he is given the right to call in such subcontractor as a codefendant. Younginer v. J. A. Jones Const. Co. (S.C. 1949) 215 S.C. 135, 54 S.E.2d 545. Workers’ Compensation 351

The liability imposed upon the principal contractor by the terms of this section [Code 1962 Section 72‑112] is not contractual in nature. Younginer v. J. A. Jones Const. Co. (S.C. 1949) 215 S.C. 135, 54 S.E.2d 545.

The principal contractor should be liable to any workman “employed in the work,” who was doing something in furtherance of the work, whether at the time of the accident he was actually on the premises or not. Smith v. Fulmer (S.C. 1941) 198 S.C. 91, 15 S.E.2d 681. Workers’ Compensation 354

5. Statutory employees

The concept of statutory employment provides an exception to the general rule that coverage under the Workers’ Compensation Act requires the existence of an employer‑employee relationship; the statutory employee doctrine converts conceded non‑employees into employees for purposes of the Act to prevent owners and contractors from subcontracting out their work to avoid liability for injuries incurred in the course of employment. Fortner v. Thomas M. Evans Const. and Development, LLC (S.C.App. 2013) 402 S.C. 421, 741 S.E.2d 538. Workers’ Compensation 187; Workers’ Compensation 233

Due to the many different factual situations which arise, no easily applied formula can be laid down for the determination of whether or not work in a given case is a part of the general trade, business or occupation of the principal employer so as to make employer a statutory employer of worker under Workers’ Compensation Code; each case must be determined on its own facts. Fortner v. Thomas M. Evans Const. and Development, LLC (S.C.App. 2013) 402 S.C. 421, 741 S.E.2d 538. Workers’ Compensation 355

Three tests are applied to determine whether the activity of an employee of a subcontractor is sufficient to make him a statutory employee of the contractor for workers’ compensation purposes, and if the activity at issue meets even one of these three criteria, the worker qualifies as the statutory employee of the contractor: (1) whether the activity an important part of the contractor’s business or trade; (2) whether the activity is a necessary, essential, and integral part of the contractor’s trade, business, or occupation; or (3) whether the identical activity has been previously performed by the contractor’s employees. Posey v. Proper Mold & Engineering, Inc. (S.C.App. 2008) 378 S.C. 210, 661 S.E.2d 395. Workers’ Compensation 354; Workers’ Compensation 355

Statutory employees are included within the scope of the Workers’ Compensation Act. Posey v. Proper Mold & Engineering, Inc. (S.C.App. 2008) 378 S.C. 210, 661 S.E.2d 395. Workers’ Compensation 187

Truck driver employed by common carrier was “statutory employee” of manufacturer of plastic injection products, which had contracted with common carrier to provide supplemental transportation, because the identical activity was previously performed by manufacturer’s own employees, and because truck driver was statutory employee, the Workers’ Compensation Commission had exclusive original jurisdiction to hear truck driver’s claims against manufacturer for injuries he sustained when hook attached to crane, operated by manufacturer’s employee, came loose and struck him; manufacturer had contracted with common carrier to provide supplemental transportation because manufacturer’s own employees were unavailable for pick up or delivery. Posey v. Proper Mold & Engineering, Inc. (S.C.App. 2008) 378 S.C. 210, 661 S.E.2d 395. Workers’ Compensation 210; Workers’ Compensation 1087

6. Jurisdiction

The question of whether contractor is workers’ compensation claimant’s statutory employer is considered jurisdictional because its answer determines the jurisdiction of the commission under the Workers’ Compensation Act; as to these jurisdictional facts, an appellate court must make its own findings according to the preponderance of the evidence after a thorough review of the entire record. Pilgrim v. Eaton (S.C.App. 2010) 391 S.C. 38, 703 S.E.2d 241. Workers’ Compensation 187; Workers’ Compensation 1939.4(1)

Circuit court had subject matter jurisdiction to determine whether truck driver employed by common carrier was a statutory employee of manufacturer of plastic injection products, which had contracted with common carrier to provide transportation, for workers’ compensation exclusive remedy purposes, and circuit court’s original subject matter jurisdiction was divested after it determined that truck driver was statutory employee of manufacturer. Posey v. Proper Mold & Engineering, Inc. (S.C.App. 2008) 378 S.C. 210, 661 S.E.2d 395. Workers’ Compensation 2215

7. Exclusive remedy

Circuit court lacked subject matter jurisdiction over worker’s negligence claims against his statutory employer; instead, jurisdiction lay exclusively with the Workers’ Compensation Commission. Posey v. Proper Mold & Engineering, Inc. (S.C.App. 2008) 378 S.C. 210, 661 S.E.2d 395. Workers’ Compensation 1087; Workers’ Compensation 2215

Workers’ compensation law’s exclusivity provision applies to “direct” employees and “statutory” employees, and thus, a statutory employee may not maintain a negligence cause of action against his direct employer or his statutory employer. Posey v. Proper Mold & Engineering, Inc. (S.C.App. 2008) 378 S.C. 210, 661 S.E.2d 395. Workers’ Compensation 2084; Workers’ Compensation 2161

If a worker is properly classified as a statutory employee, his sole remedy for work‑related injuries is to seek relief under the Workers’ Compensation Act. Posey v. Proper Mold & Engineering, Inc. (S.C.App. 2008) 378 S.C. 210, 661 S.E.2d 395. Workers’ Compensation 2084

8. Presumptions and burden of proof

The burden of proving the relationship of employer and employee is upon the claimants. And this proof must be made by the greater weight of the evidence. Marlow v. E. L. Jones & Son, Inc. (S.C. 1966) 248 S.C. 568, 151 S.E.2d 747.

**SECTION 42‑1‑415.** Representation of coverage; reimbursement from Uninsured Employers’ Fund.

(A) Notwithstanding any other provision of law, upon the submission of documentation to the commission that a contractor or subcontractor has represented himself to a higher tier subcontractor, contractor, or project owner as having workers’ compensation insurance at the time the contractor or subcontractor was engaged to perform work, the higher tier subcontractor, contractor, or project owner must be relieved of any and all liability under this title except as specifically provided in this section. In the event that employer is uninsured, regardless of the number of employees that employer has, the higher tier subcontractor, contractor, project owner, or his insurance carrier shall in the first instance pay all benefits due under this title. The higher tier subcontractor, contractor, project owner, or his insurance carrier may petition the commission to transfer responsibility for continuing compensation and benefits to the Uninsured Employers’ Fund. The Uninsured Employers’ Fund shall assume responsibility for claims within thirty days of a determination of responsibility made by the commission. The higher tier subcontractor, contractor, or project owner must be reimbursed from the Uninsured Employers’ Fund as created by Section 42‑7‑200 for compensation and medical benefits as may be determined by the commission. Any disputes arising as a result of claims filed under this section must be determined by the commission.

(B) To qualify for reimbursement under this section, the higher tier subcontractor, contractor, or project owner must collect documentation of insurance as provided in subsection (A) on a standard form acceptable to the commission. The documentation must be collected at the time the contractor or subcontractor is engaged to perform work and must be turned over to the commission at the time a claim is filed by the injured employee.

(C) The knowing and wilful falsifying of information contained in standard forms submitted pursuant to this section must be considered fraud and subjects the person responsible for filing the false documentation to the penalties for fraud as provided by law. Knowing and wilful failure to notify, by certified mail, the higher tier subcontractor, contractor, or project owner who originally was provided documentation of workers’ compensation coverage of a lapse in coverage within five days after the lapse is considered fraud and subjects the contractor or subcontractor who represented himself as having workers’ compensation insurance to the penalties for fraud provided by law. Additionally, a contractor or subcontractor who knowingly and wilfully falsely documents workers’ compensation insurance or knowingly and wilfully fails to provide notice of lapse in workers’ compensation coverage as specified in this section, or any contractor or subcontractor who refuses to reimburse the Uninsured Employers’ Fund for a claim paid on its behalf shall suffer the revocation of his license or certificate as a contractor or residential home builder under applicable provisions of Title 40; provided, however, notwithstanding any other provision of law, the license or certificate of a contractor or residential home builder shall be revoked for a period of two years when the contractor or subcontractor knowingly and wilfully falsely documents workers’ compensation insurance or knowingly or wilfully fails to provide notice of lapse in workers’ compensation coverage as specified in this section. Upon expiration of the two‑year revocation period, or when the license or certificate of any contractor or subcontractor is revoked for refusal to reimburse the Uninsured Employers’ Fund for a claim paid on its behalf, the licensing entity of the contractor or subcontractor may reissue the license or certificate of the contractor or residential home builder in the same manner as any other revoked license.

(D) However, nothing in this section shall be construed to abrogate the immunity to tort liability of any subcontractor under this title or any higher tier subcontractor, contractor, or project owner who may be considered a statutory employer as provided by Sections 42‑1‑400, 42‑1‑410, 42‑1‑420, 42‑1‑430, and 42‑1‑450.

HISTORY: 1996 Act No. 442, Section 1, eff June 18, 1996; 1997 Act No. 65, Section 1, eff June 10, 1997.

CROSS REFERENCES

Documentation of insurance, see S.C. Code of Regulations R. 67‑415.

Library References

Workers’ Compensation 356.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 253 to 256.

NOTES OF DECISIONS

In general 1

Sufficiency of evidence 2

1. In general

Failure of concrete products supplier to collect insurance documentation when temporary workers were engaged to perform work on supplier’s leased work site did not preclude supplier from being the workers’ statutory employer and, thus, entitled to immunity under exclusivity provision of the Workers’ Compensation Act with regard to work‑related accident in which one worker was killed and the other was severely injured; statute requiring higher‑tier subcontractor, contractor or project owner to collect documentation of insurance concerned only eligibility for reimbursement from Uninsured Employer’s Fund and had no bearing on the supplier’s statutory employer status. Poch v. Bayshore Concrete Products/South Carolina, Inc. (S.C.App. 2009) 386 S.C. 13, 686 S.E.2d 689, rehearing denied, certiorari granted, affirmed as modified 405 S.C. 359, 747 S.E.2d 757. Workers’ Compensation 359

For purposes of statutory exception to general rule that higher tier contractor remains liable to pay workers’ compensation benefits to employee of lower tier contractor if he sustains a compensable injury, which allows liability to be transferred from higher tier contractor to Uninsured Employers’ Fund if higher tier contractor has properly documented lower tier contractor’s claim that it retains workers’ compensation insurance, phrase “subcontractor has represented himself ... as having workers’ compensation insurance” in conjunction with “at the time the contractor or subcontractor was engaged to perform work” encompasses a continuous spectrum and includes the complete time frame in which subcontractor is engaged to perform work; in other words, in order to transfer liability to the Fund, a general contractor may not rely upon a certificate reflecting an expired policy as documentation of workers’ compensation insurance. Hopper v. Terry Hunt Const. (S.C. 2009) 383 S.C. 310, 680 S.E.2d 1, rehearing denied. Workers’ Compensation 359

Narrow exception to general rule that a higher tier contractor is considered the statutory‑employer of an employee of a lower tier contractor, such that higher tier contractor remains liable to pay benefits to an employee if he sustains a compensable injury allows liability to be transferred from the higher tier contractor to the Uninsured Employers’ Fund after the higher tier contractor has properly documented the lower tier contractor’s claim that it retains workers’ compensation insurance. Hopper v. Terry Hunt Const. (S.C. 2009) 383 S.C. 310, 680 S.E.2d 1, rehearing denied. Workers’ Compensation 357

Under the Workers’ Compensation Act, absent documentation that a contractor or subcontractor has represented himself to a higher tier subcontractor, contractor, or project owner as having workers’ compensation insurance at the time the contractor or subcontractor was engaged to perform work, the employee of the sub‑contractor may look to the prime contractor for workers’ compensation benefits without regard to whether the sub‑contractor is covered by a workers’ compensation insurance policy. Barton v. Higgs (S.C. 2009) 381 S.C. 367, 674 S.E.2d 145, rehearing denied. Workers’ Compensation 351

General contractor was not entitled to shift burden of coverage for employee of subcontractor’s work‑related injuries to the Uninsured Employers’ Fund, where general contractor failed to comply with workers’ compensation statute governing reimbursement from the Fund by verifying subcontractor’s proof of insurance at the time subcontractor was hired for the job. Hardee v. McDowell (S.C. 2009) 381 S.C. 445, 673 S.E.2d 813. Workers’ Compensation 359

Phrase “engaged to perform work” referred to each time a subcontractor was hired to perform work, as that phrase was used in workers’ compensation statute providing that, in order to qualify for reimbursement from Uninsured Employers’ Fund, the contractor must collect proof of insurance at the time the subcontractor is “engaged to perform work.” Hardee v. McDowell (S.C. 2009) 381 S.C. 445, 673 S.E.2d 813. Workers’ Compensation 359

Although subcontractor provided certificate of insurance to general contractor, there was no indication on the certificate of insurance in which state, if any, subcontractor had workers’ compensation coverage, and based on this, there was substantial evidence to support the Workers’ Compensation Commission’s finding that general contractor did not satisfy statute governing transfer of liability to Uninsured Employers’ Fund with respect to injury to subcontractor’s employee. Hopper v. Terry Hunt Const. (S.C.App. 2007) 373 S.C. 475, 646 S.E.2d 162, rehearing denied, certiorari granted, affirmed 383 S.C. 310, 680 S.E.2d 1. Workers’ Compensation 1461

General contractor was entitled by statute to shift to Uninsured Employer’s Fund burden of paying workers’ compensation benefits to subcontractor’s employee, where general contractor collected documentation of insurance at time subcontractor was engaged to perform work and general contractor was not required to continue to collect proof of insurance coverage after subcontractor was engaged to perform work. South Carolina Uninsured Employer’s Fund v. House (S.C.App. 2004) 360 S.C. 468, 602 S.E.2d 81, rehearing denied, certiorari denied. Workers’ Compensation 357

Self‑employed electrical subcontractor’s submission of certificate of liability insurance to general contractor for construction of home, which listed subcontractor as named insured, when in fact the policy covered subcontractor’s employees but not the subcontractor himself, did not necessarily make the Workers’ Compensation Act the exclusive remedy for subcontractor’s alleged injury at job site; existence of employer‑employee relationship between general contractor and subcontractor, which was required for coverage under the Act, was unclear. Tillotson v. Keith Smith Builders (S.C.App. 2004) 357 S.C. 554, 593 S.E.2d 621, rehearing denied, certiorari dismissed as improvidently granted 366 S.C. 334, 621 S.E.2d 889. Workers’ Compensation 2165

2. Sufficiency of evidence

Substantial evidence supported Workers’ Compensation Commission’s finding that general contractor failed to satisfy statute governing transfer of liability to Uninsured Employers’ Fund with respect to injury of subcontractor’s employee; certificate of workers’ compensation insurance that subcontractor submitted to general contractor contained no information regarding the coverage that policy provided, the deductible amount, or the project to which policy applied, and certificate reflected that policy had expired at time subcontractor’s employee was injured. Hopper v. Terry Hunt Const. (S.C. 2009) 383 S.C. 310, 680 S.E.2d 1, rehearing denied. Workers’ Compensation 359

**SECTION 42‑1‑420.** Liability of subcontractor to workmen of sub‑subcontractor.

When a subcontractor in turn contracts with still another person, in this section and Sections 42‑1‑430 to 42‑1‑450 also referred to as a “subcontractor,” for the performance or execution by or under such last subcontractor of the whole or any part of the work undertaken by the first subcontractor, the liability of the owner or contractor shall be the same as the liability imposed by Sections 42‑1‑400 and 42‑1‑410.

HISTORY: 1962 Code Section 72‑113; 1952 Code Section 72‑113; 1942 Code Section 7035‑22; 1936 (39) 1231.

CROSS REFERENCES

Definition of “employee”, see Section 42‑1‑130.

“Entire work force”, within meaning of provisions regulating staff leasing services, includes persons considered employees under this section, see Section 40‑68‑10.

Library References

Workers’ Compensation 349 to 351, 2160.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 244, 1800 to 1802.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 105:17, Owners and Contractors.

NOTES OF DECISIONS

In general 1

1. In general

“Upstream” subcontractors were statutory employers of an employee of a sub‑sub‑contractor under the Workers’ Compensation Act, and thus were immune from tort liability. Brittingham v. Williams Sign Erectors, Inc. (S.C.App. 1989) 299 S.C. 259, 384 S.E.2d 319. Workers’ Compensation 350

Effect of Sections 42‑1‑400 through 42‑1‑450, when brought into operation, is to impose absolute liability of immediate employer upon owner and/or general contractor although latter is not in law immediate employer of injured workmen; owner who obtains benefit of work inevitably absorbs costs of providing protection for workers and, in return, employer receives immunity from other remedies which ordinarily might be sought by employee; “dual‑capacity doctrine,” under which employer, normally shielded from tort liability by exclusive remedy principle, becomes liable in tort to his own employee if he occupies, in addition to his capacity as employer, second capacity that confers upon him obligations independent of those imposed upon him as employer, is inapplicable where injured workman is engaged in work which is directly relates to his employment; to allow recovery where workman was employed to construct roof and was killed when roof collapsed would make employer’s liability uncertain and indeterminate. Parker v. Williams and Madjanik, Inc. (S.C. 1980) 275 S.C. 65, 267 S.E.2d 524.

**SECTION 42‑1‑430.** Construction of title when proceedings are against owner or contractor.

When compensation is claimed from or proceedings are taken against an owner or contractor then, in the application of this title, reference to the owner or contractor shall be substituted for reference to the subcontractor, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the subcontractor by whom he is immediately employed.

HISTORY: 1962 Code Section 72‑114; 1952 Code Section 72‑114; 1942 Code Section 7035‑22; 1936 (39) 1231.

Library References

Workers’ Compensation 2160.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 1800 to 1802.

NOTES OF DECISIONS

In general 1

1. In general

Effect of Sections 42‑1‑400 through 42‑1‑450, when brought into operation, is to impose absolute liability of immediate employer upon owner and/or general contractor although latter is not in law immediate employer of injured workmen; owner who obtains benefit of work inevitably absorbs costs of providing protection for workers and, in return, employer receives immunity from other remedies which ordinarily might be sought be employee; “dual‑capacity doctrine,” under which employer, normally shielded from tort liability be exclusive remedy principle, becomes liable in tort to his own employee if he occupies, in addition to his capacity as employer, second capacity that confers upon him obligations independent of those imposed upon him as employer, is inapplicable where injured workman is engaged in work which is directly relates to his employment; to allow recovery where workman was employed to construct roof and was killed when roof collapsed would make employer’s liability uncertain and indeterminate. Parker v. Williams and Madjanik, Inc. (S.C. 1980) 275 S.C. 65, 267 S.E.2d 524.

**SECTION 42‑1‑440.** Indemnity of principal contractor.

When the principal contractor is liable to pay compensation under any of Sections 42‑1‑400 to 42‑1‑450, he shall be entitled to indemnity from any person who would have been liable to pay compensation to the workmen independently of such sections or from an intermediate contractor, and have a cause of action therefor.

A principal contractor when sued by a workman of a subcontractor shall have the right to call in that subcontractor or any intermediate contractor or contractors as defendant or codefendant.

HISTORY: 1962 Code Section 72‑115; 1952 Code Section 72‑115; 1942 Code Section 7035‑22; 1936 (39) 1231.

Library References

Workers’ Compensation 2142.10.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 1791 to 1797.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 105:17, Owners and Contractors.

Modern Workers’ Compensation Section 105:18, Owners and Contractors‑Contracting Out Part of One’s Business.

NOTES OF DECISIONS

In general 1

1. In general

The term “principal contractor” is synonymous with owner. Blue Ridge Rural Elec. Co‑op., Inc. v. Byrd (C.A.4 (S.C.) 1956) 238 F.2d 346, certiorari granted 77 S.Ct. 557, 352 U.S. 999, 1 L.Ed.2d 544, reversed 78 S.Ct. 893, 356 U.S. 525, 2 L.Ed.2d 953, rehearing denied 78 S.Ct. 1366, 357 U.S. 933, 2 L.Ed.2d 1375.

Primary contractor, who was liable as statutory employer for payment of death benefits to survivors of subcontractor’s employee, could seek indemnity from uninsured subcontractor for benefits paid, but not from Workers’ Compensation Uninsured Employers’ Fund; the legislative purpose in establishing the Fund was to provide compensation for claimants, not to indemnify statutory employers or their carriers. Miller v. Lawrence Robinson Trucking (S.C.App. 1998) 333 S.C. 576, 510 S.E.2d 431, rehearing denied, certiorari denied. Workers’ Compensation 2142.20

Contractor who is liable to pay compensation under the statutory employer doctrine is entitled to indemnity from the worker’s immediate employer. Miller v. Lawrence Robinson Trucking (S.C.App. 1998) 333 S.C. 576, 510 S.E.2d 431, rehearing denied, certiorari denied. Workers’ Compensation 2142.20

Upstream contractor who is liable to pay workers’ compensation benefits to subcontractor’s employee under statutory employment doctrine may either bring a separate action for indemnification or join the immediate employer as a defendant in the action brought by the employee against the contractor. Miller v. Lawrence Robinson Trucking (S.C.App. 1998) 333 S.C. 576, 510 S.E.2d 431, rehearing denied, certiorari denied. Workers’ Compensation 1196; Workers’ Compensation 2142.20

Under statutory employment doctrine, an employee of a subcontractor may recover workers’ compensation benefits from either his employer or an upstream contractor, but not from both. Miller v. Lawrence Robinson Trucking (S.C.App. 1998) 333 S.C. 576, 510 S.E.2d 431, rehearing denied, certiorari denied. Workers’ Compensation 344; Workers’ Compensation 351

Effect of statutory employment provisions of Workers’ Compensation Act is to impose the absolute liability of an immediate employer upon the owner and/or general contractor, although it was not in law the immediate employer of the injured workman; these provisions should not be interpreted to mean the contractor’s liability arises only if the immediate employer fails to provide compensation. Miller v. Lawrence Robinson Trucking (S.C.App. 1998) 333 S.C. 576, 510 S.E.2d 431, rehearing denied, certiorari denied. Workers’ Compensation 351; Workers’ Compensation 352

Under the Workers’ Compensation Act, the prime contractor is entitled to indemnification from the subcontractor, where the prime contractor pays for the subcontractor’s employee’s injuries, through the doctrine of “statutory employee”. Freeman Mechanical, Inc. v. J.W. Bateson Co., Inc. (S.C. 1994) 316 S.C. 95, 447 S.E.2d 197. Workers’ Compensation 346

The South Carolina Workers’ Compensation Act entitles the prime contractor to indemnification by the sub‑contractor for any workers’ compensation benefits paid by the prime contractor on behalf of the subcontractor’s employee; the purpose of this dual liability together with the assignment of primary liability and secondary liability is to provide as many employees with workers’ compensation as possible, while recognizing that where the subcontractor has workers’ compensation insurance, the contractor has indirectly paid the premiums through the contract price. Freeman Mechanical, Inc. v. J.W. Bateson Co., Inc. (S.C. 1994) 316 S.C. 95, 447 S.E.2d 197. Workers’ Compensation 344

In an action arising from work‑related injuries of a subcontractor’s employee, the prime contractor was immune from a suit for indemnification by the workers’ compensation carrier of the subcontractor; since the prime contractor was potentially liable under the Act for workers’ compensation benefits paid to the subcontractors’ employee, the prime contractor enjoyed the immunity created by the Workers’ Compensation Act from common law claims. Freeman Mechanical, Inc. v. J.W. Bateson Co., Inc. (S.C. 1994) 316 S.C. 95, 447 S.E.2d 197. Workers’ Compensation 2165

An injured employee was not required to establish that his immediate employer was financially irresponsible before bringing a claim against his statutory employer, since the statutory employer is entitled to indemnity from the immediate employer, either through a separate action or by joining him as a defendant in the action brought by the injured employee, and Section 42‑1‑450 provides that nothing in the sections preceding shall be construed as preventing the employee from recovering from a subcontractor instead of the principal contractor. Long v. Atlantic Homes (S.C. 1993) 311 S.C. 237, 428 S.E.2d 711.

“Upstream” subcontractors were statutory employers of an employee of a sub‑sub‑contractor under the Workers’ Compensation Act, and thus were immune from tort liability. Brittingham v. Williams Sign Erectors, Inc. (S.C.App. 1989) 299 S.C. 259, 384 S.E.2d 319. Workers’ Compensation 350

Effect of Sections 42‑1‑400 through 42‑1‑450, when brought into operation, is to impose absolute liability of immediate employer upon owner and/or general contractor although latter is not in law immediate employer of injured workmen; owner who obtains benefit of work inevitably absorbs costs of providing protection for workers and, in return, employer receives immunity from other remedies which ordinarily might be sought be employee; “dual‑capacity doctrine,” under which employer, normally shielded from tort liability be exclusive remedy principle, becomes liable in tort to his own employee if he occupies, in addition to his capacity as employer, second capacity that confers upon him obligations independent of those imposed upon him as employer, is inapplicable where injured workman is engaged in work which is directly relates to his employment; to allow recovery where workman was employed to construct roof and was killed when roof collapsed would make employer’s liability uncertain and indeterminate. Parker v. Williams and Madjanik, Inc. (S.C. 1980) 275 S.C. 65, 267 S.E.2d 524.

**SECTION 42‑1‑450.** Workman may recover from subcontractor.

Nothing in Sections 42‑1‑400 to 42‑1‑450 shall be construed as preventing a workman from recovering compensation under this title from a subcontractor instead of from the principal contractor but he shall not collect from both.

HISTORY: 1962 Code Section 72‑116; 1952 Code Section 72‑116; 1942 Code Section 7035‑22; 1936 (39) 1231.

Library References

Workers’ Compensation 350, 2165, 2166.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 1800 to 1802.

NOTES OF DECISIONS

In general 1

1. In general

An injured employee was not required to establish that his immediate employer was financially irresponsible before bringing a claim against his statutory employer, since the statutory employer is entitled to indemnity from the immediate employer, either through a separate action or by joining him as a defendant in the action brought by the injured employee, and Section 42‑1‑450 provides that nothing in the sections preceding shall be construed as preventing the employee from recovering from a subcontractor instead of the principal contractor. Long v. Atlantic Homes (S.C. 1993) 311 S.C. 237, 428 S.E.2d 711.

“Upstream” subcontractors were statutory employers of an employee of a sub‑sub‑contractor under the Workers’ Compensation Act, and thus were immune from tort liability. Brittingham v. Williams Sign Erectors, Inc. (S.C.App. 1989) 299 S.C. 259, 384 S.E.2d 319. Workers’ Compensation 350

Effect of Sections 42‑1‑400 through 42‑1‑450, when brought into operation, is to impose absolute liability of immediate employer upon owner and/or general contractor although latter is not in law immediate employer of injured workmen; owner who obtains benefit of work inevitably absorbs costs of providing protection for workers and, in return, employer receives immunity from other remedies which ordinarily might be sought by employee; “dual‑capacity doctrine,” under which employer, normally shielded from tort liability be exclusive remedy principle, becomes liable in tort to his own employee if he occupies, in addition to his capacity as employer, second capacity that confers upon him obligations independent of those imposed upon him as employer, is inapplicable where injured workman is engaged in work which is directly relates to his employment; to allow recovery where workman was employed to construct roof and was killed when roof collapsed would make employer’s liability uncertain and indeterminate. Parker v. Williams and Madjanik, Inc. (S.C. 1980) 275 S.C. 65, 267 S.E.2d 524.

A plaintiff, having collected death benefits for death of employee of a contractor from the contractor, a construction company doing work for an owner (the defendant power company) which was part of its business, trade or occupation, is barred from bringing a common‑law action against the owner, who is a statutory employer, and the plaintiff cannot recover from both and recovery under the Compensation Act bars a recovery or action at common law. Bell v. South Carolina Elec. & Gas Co. (S.C. 1959) 234 S.C. 577, 109 S.E.2d 441.

**SECTION 42‑1‑460.** Contracts subject to title.

Every contract of service between any employer and employee covered by this title, written or implied, in operation or made or implied prior to July 17, 1936, shall be presumed to continue, subject to the provisions of this title; and every such contract made subsequent to said date shall be presumed to have been made subject to the provisions of this title. A like presumption shall exist equally in the case of all minors, unless notice of the same character be given by or to the parent or guardian of the minor.

HISTORY: 1962 Code Section 72‑117; 1952 Code Section 72‑117; 1942 Code Section 7035‑6; 1936 (39) 1231; 1996 Act No. 424, Section 5, eff June 18, 1996.

Editor’s Note

1996 Act. No. 424, Section 13, provides, in part, as follows: “Employers who have filed with the Workers’ Compensation Commission a notice to reject the provisions of Title 42 before the effective date of the 1996 amendment will have until July 1, 1997, to comply with the provisions of the 1996 amendment relating to insuring their workers’ compensation liabilities. Any employer who has rejected the terms of this title prior to approval of the 1996 amendment and has procured another form of employee benefits insurance shall comply, not later than July 1, 1997, with the provisions of the 1996 amendment relating to the insuring of its workers’ compensation liabilities. Furthermore, nothing in the 1996 amendment shall affect or alter any cause of action, right, or claim accruing before the effective date of the 1996 amendment; however, any such cause of action, remedy, or claim accruing before the effective date of the 1996 amendment shall be governed by the law prior to the effective date of the 1996 amendment.”

Library References

Workers’ Compensation 9, 362, 1340.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 42 to 45, 258 to 259, 1029.

NOTES OF DECISIONS

In general 1

1. In general

The Compensation Law expressly incorporates its terms into all employment agreements and insurance contracts entered into thereunder. Tedars v. Savannah River Veneer Co. (S.C. 1943) 202 S.C. 363, 25 S.E.2d 235, 147 A.L.R. 914.

Payment of workmen’s compensation is not a capital or unusual expenditure, but on the contrary, is an operating expense and a contractual liability. The terms of the Act, when applicable, are a part of the contract of employment. Brown v. Town of Patrick (S.C. 1943) 202 S.C. 236, 24 S.E.2d 365. Towns 54; Workers’ Compensation 9

Any doubt as to whether the contract for employment or the actual commencement of work is the jurisdictional factor for bringing the Act into operation is removed by this section; the contract for employment is the jurisdictional factor, not the commencement of work. Simpkins v. Lumbermens Mut. Cas. Co. (S.C. 1942) 200 S.C. 228, 20 S.E.2d 733.

**SECTION 42‑1‑470.** Coverage of prisoners and convicts generally.

Except as otherwise specifically provided in this article, this title shall not apply to state, county or municipal prisoners and convicts.

HISTORY: 1962 Code Section 72‑108.1; 1952 Code Section 72‑108.1; 1942 Code Section 7035‑16; 1936 (39) 1231; 1937 (40) 153, 613; 1939 (41) 323.

Library References

Workers’ Compensation 387.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Section 270.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Forfeitures Section 6, Constitutional Prohibition Against Forfeiture of Estate.

Treatises and Practice Aids

Modern Workers’ Compensation Section 106:50, Prisoners.

NOTES OF DECISIONS

In general 1

1. In general

An injured worker was entitled to workers’ compensation benefits for his work‑related injury where he was injured in an on‑the‑job accident, but 2 months later was incarcerated on unrelated criminal charges; although Section 42‑1‑470 provides that workers’ compensation does not apply to prisoners and convicts, the entitlement to workers compensation benefits constituted a property interest and S.C. Const. Art. 1 Section 4 forbids the automatic forfeiture of property rights upon conviction. Last v. MSI Const. Co., Inc. (S.C. 1991) 305 S.C. 349, 409 S.E.2d 334.

Since it is employment relationship which gives rise to liability for and right to compensation, where prisoner entered into private contract of hire with employee and was indistinguishable from any other employee, prisoner transcended his status and became private employee entitled to workmen’s compensation benefits. Hamilton v. Daniel Intern. Corp. (S.C. 1979) 273 S.C. 409, 257 S.E.2d 157.

**SECTION 42‑1‑480.** Coverage for inmates of the State Department of Corrections.

Any inmate of the State Department of Corrections, as defined in this section, in the performance of his work in connection with the maintenance of the institution, any department vocational training program, or with any industry maintained therein, or with any highway or public works activity outside the institution, who suffers an injury for which compensation is specifically prescribed in this title, may, upon being released from such institution either upon parole or upon final discharge, be awarded and paid compensation under the provisions of this title. If death results from such injury, death benefits shall be awarded and paid to the dependents of the inmate. The time limit for filing a claim under this section shall be one year from the date of death of the inmate or the date of his release either by parole or final discharge, and no inmate shall be eligible for benefits unless his injury is reported prior to his release from custody of the department. If any person who has been awarded compensation under the provisions of this section shall be recommitted to an institution covered by this section, such compensation shall immediately cease, but may be resumed upon subsequent parole or discharge.

For purposes of this section, the term “inmate” includes any person sentenced to the South Carolina Department of Corrections and who is then in the jurisdiction of the department, or any person sentenced to the county public works who has been transferred to the Department of Corrections for confinement. An inmate who has been sentenced to the Department of Corrections and who is temporarily transferred to the county public works, or to any other South Carolina law‑enforcement authority, or to out‑of‑state authorities, is not considered to be in the “jurisdiction” of the South Carolina Department of Corrections for purposes of this section.

This section shall not apply to patients of the South Carolina Department of Mental Health or those persons who are confined within the jurisdiction of the county prisons, county jails, city jails or overnight lockups or to any inmate injured in a fight, riot, recreational activity or other incidents not directly related to his work assignment.

HISTORY: 1962 Code Section 72‑11.1; 1971 (57) 788; 1972 (57) 2559.

CROSS REFERENCES

Average weekly wage for inmates of the Department of Corrections, see Section 42‑7‑65.

Library References

Workers’ Compensation 387.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Section 270.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 106:43, Mental Health Program Participants.

Modern Workers’ Compensation Section 106:50, Prisoners.

Attorney General’s Opinions

1962 Code Section 72‑11.1, as amended [1976 Code Section 42‑1‑480], does not provide Workmen’s Compensation coverage for inmates assigned by the Department of Corrections to County correctional facilities. 1975‑76 Op.Atty.Gen., No 4279, p 94, 1976 WL 22899.

South Carolina Department of Corrections prisoners employed by outside employers in voluntary, paid, work‑release programs pursuant to 1962 Code Section 55‑321.1 [1976 Code Section 24‑3‑20] are subject to the workmen’s compensation law in the same manner as the outside employer’s other employees, payable by that employer’s insurance carrier. 1975‑76 Op.Atty.Gen., No 4552, p 423, 1976 WL 23168.

NOTES OF DECISIONS

In general 1

1. In general

Coverage under Workers’ Compensation Act is generally dependent on existence of employer‑employee relationship; however, there are certain statutory exceptions to such rule, including exception which imposed liability on employer or business owner for payment of compensation for benefits to worker not directly employed by the employer. Neese v. Michelin Tire Corp. (S.C.App. 1996) 324 S.C. 465, 478 S.E.2d 91, certiorari denied. Workers’ Compensation 233; Workers’ Compensation 351; Workers’ Compensation 352

Section 42‑1‑480 contemplates availability of full worker’s compensation benefits, including medical benefits, to former inmates, subject only to restrictions expressly imposed by statute, such as Section 42‑1‑490 which prohibits lump‑sum settlements. Davis v. South Carolina Dept. of Corrections (S.C. 1986) 289 S.C. 123, 345 S.E.2d 245. Workers’ Compensation 961

Former inmate who had sustained injury while working as a kitchen helper while serving a youthful offender sentence at a work release center was entitled to medical benefits and to temporary total benefits. Davis v. South Carolina Dept. of Corrections (S.C. 1986) 289 S.C. 123, 345 S.E.2d 245. Workers’ Compensation 961

**SECTION 42‑1‑490.** Payments to claimant‑inmates of State Department of Corrections.

Payments for injuries as authorized in Section 42‑1‑480 shall be paid from the State Accident Fund from appropriations thereto in the manner claims are paid to state employees.

Notwithstanding any other provision of this title, no inmate shall be paid a lump‑sum settlement for an injury, disfigurement or death benefit. Any such lump‑sum benefit which might normally be paid to an inmate or another eligible person who is not an inmate shall be paid on a monthly basis not to exceed ten percent of the total amount in any month, in addition to any weekly benefits awarded.

HISTORY: 1962 Code Section 72‑11.2; 1971 (57) 788; 1972 (57) 2559; 1993 Act No. 181, Section 985, eff July 1, 1993.

Library References

Workers’ Compensation 961, 1005.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 544, 546, 718.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 205:6, Lump Sum Payments‑Grounds for Commutation.

NOTES OF DECISIONS

In general 1

1. In general

Section 42‑1‑480 contemplates availability of full worker’s compensation benefits, including medical benefits, to former inmates, subject only to restrictions expressly imposed by statute, such as Section 42‑1‑490 which prohibits lump‑sum settlements. Davis v. South Carolina Dept. of Corrections (S.C. 1986) 289 S.C. 123, 345 S.E.2d 245. Workers’ Compensation 961

**SECTION 42‑1‑500.** County or municipal prisoners.

A county or municipality, by resolution of its governing body, may elect to cover prisoners in the custody of the county or municipality with workers’ compensation benefits in accordance with the provisions of Sections 42‑1‑480 and 42‑1‑490. As used in this section, prisoners in the custody of the county include prisoners in the custody of the county sheriff. The appropriate officials shall make arrangements and necessary adjustments in their contributions or premiums to the State Accident Fund or other insurers as the fund or insurers determine necessary to provide compensation for county or municipal prisoners in appropriate cases. The provisions of this section permit workers’ compensation coverage only to county or municipal prisoners performing work assigned by officials of the county or municipality or engaged in a vocational training program and, further, apply to these prisoners regardless of the length of the sentence to be served.

For the purposes of this section, when a county or municipality elects to cover its prisoners with workers’ compensation benefits, the coverage also includes:

(a) those prisoners who have been sentenced to the Department of Corrections and who are assigned to a county or municipality; and

(b) those prisoners who have been sentenced to the Department of Corrections and who are being used for public service work or related activities while being supervised by the county or municipality.

HISTORY: 1962 Code Section 72‑11.3; 1971 (57) 788; 1972 (57) 2559; 1991 Act No. 16, Section 1, eff April 9, 1991; 1993 Act No. 181, Section 986, eff July 1, 1993; 2005 Act No. 98, Section 1, eff June 1, 2005.

Library References

Workers’ Compensation 387.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Section 270.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 101:7, Public Offenders.

Attorney General’s Opinions

Where County prisoners are assigned by County officials to perform work outside of the prison facility related to a proper County function and such work is without compensation, such prisoners are not covered under the workmen’s compensation law unless the County has elected to provide for such coverage under Section 42‑1‑500; absent coverage under Section 42‑1‑500 or some other express waiver of Sovereign Immunity the County and its agencies would be immune from suit for negligence related to a prisoner who is injured while performing work as discussed above. 1982 Op.Atty.Gen., No. 82‑6, p 8, 1982 WL 154976.

**SECTION 42‑1‑505.** Coverage of convicted persons under custody or supervision of Department of Probation, Parole and Pardon Services.

The Department of Probation, Parole and Pardon Services may elect to cover convicted persons under its custody or supervision with workers’ compensation benefits in accordance with the provisions of this title. For purposes of this section, the department is considered the employer for those persons under its custody or supervision performing public service employment.

HISTORY: 1986 Act No. 462, Section 8, eff June 3, 1986.

CROSS REFERENCES

Department of Probation, Parole and Pardon Services, generally, see Section 24‑21‑10 et seq.

Library References

Workers’ Compensation 387.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Section 270.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 101:7, Public Offenders.

**SECTION 42‑1‑520.** Defenses available to employer operating under title when employee is not so operating.

An officer of a corporation who elects not to operate under this title, shall, in any action to recover damages for personal injury or death brought against an employer accepting the compensation provisions of this title, proceed at common law and the employer may avail himself of the defenses of contributory negligence, negligence of a fellow servant, and assumption of risk, as such defenses exist at common law.

HISTORY: 1962 Code Section 72‑119; 1952 Code Section 72‑119; 1942 Code Section 7035‑18; 1936 (39) 1231; 1996 Act No. 424, Section 12, eff June 18, 1996.

Editor’s Note

1996 Act No. 424, Section 13, provides, in part, as follows:

“Section 13. Employers who have filed with the Workers’ Compensation Commission a notice to reject the provisions of Title 42 before the effective date of the 1996 amendment will have until July 1, 1997, to comply with the provisions of the 1996 amendment relating to insuring their workers’ compensation liabilities. Any employer who has rejected the terms of this title prior to approval of the 1996 amendment and has procured another form of employee benefits insurance shall comply, not later than July 1, 1997, with the provisions of the 1996 amendment relating to the insuring of its workers’ compensation liabilities. Furthermore, nothing in the 1996 amendment shall affect or alter any cause of action, right, or claim accruing before the effective date of the 1996 amendment; however, any such cause of action, remedy, or claim accruing before the effective date of the 1996 amendment shall be governed by the law prior to the effective date of the 1996 amendment.”

Library References

Workers’ Compensation 2110 to 2112.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Section 1726.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Negligence Section 27, Contributory Negligence.

Forms

South Carolina Litigation Forms and Analysis Section 10:25 , Injury by Fellow Servant.

**SECTION 42‑1‑540.** Employee’s rights and remedies under title exclude all others against employer.

The rights and remedies granted by this title to an employee when he and his employer have accepted the provisions of this title, respectively, to pay and accept compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents or next of kin as against his employer, at common law or otherwise, on account of such injury, loss of service or death. Provided, however, this limitation of actions shall not apply to injuries resulting from acts of a subcontractor of the employer or his employees or bar actions by an employee of one subcontractor against another subcontractor or his employees when both subcontractors are hired by a common employer.

HISTORY: 1962 Code Section 72‑121; 1952 Code Section 72‑121; 1942 Code Section 7035‑11; 1936 (39) 1231; 1974 (58) 2258.

CROSS REFERENCES

Definition of “injury” and “personal injury”, see Section 42‑1‑160.

In action for damages by employee against client company within meaning of staff leasing services agreement, client company having failed or neglected to provide workers’ compensation insurance coverage, this section does not apply, see Section 40‑68‑75.

Prohibition against retaliation based upon an employee’s participation in proceedings under this title, see Section 41‑1‑80.

Rights and remedies granted by Title 42 to employee, when he and a licensee under provisions regulating staff leasing services have accepted the provisions of Title 42, exclude all other rights as provided in this section, see Section 40‑68‑70.

Library References

Workers’ Compensation 2084, 2142.50, 2145.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 1721 to 1725, 1748 to 1749, 1780 to 1781, 1784, 1787 to 1797.

RESEARCH REFERENCES

ALR Library

27 ALR 7th 2 , Status as Alter Ego of Employer for Purposes of Exclusive Remedy Rule Barring Third‑Party Action Under Workers’ Compensation Statutes.

19 ALR 6th 1 , Liability of Employer, Supervisor, or Manager for Intentionally or Recklessly Causing Employee Emotional Distress‑Ethnic, Racial, or Religious Harassment or Discrimination.

51 ALR 5th 163 , Workers’ Compensation as Precluding Employee’s Suit Against Employer for Sexual Harassment in the Workplace.

13 ALR 5th 289 , Breach of Assumed Duty to Inspect Property as Ground for Liability to Third Party.

Encyclopedias

40 Am. Jur. Proof of Facts 2d 603, Employer’s Tort Liability Under Dual Capacity Doctrine.

48 Am. Jur. Proof of Facts 2d 1, Workers’ Compensation‑Employer’s Intentional Misconduct.

S.C. Jur. Action Section 15, Exclusive or Cumulative Remedies.

S.C. Jur. Architects and Engineers Section 27, Injured Construction Workers.

S.C. Jur. Contribution Section 11, Defendants Immune from Direct Action.

S.C. Jur. Master and Servant Section 2, Test to Determine Status as Employee.

Treatises and Practice Aids

7 Causes of Action 2d 197, Cause of Action Against Employer for Intentional Exposure of Employee to Hazardous Condition in Workplace.

28 Causes of Action 2d 523, Cause of Action by Injured Worker Against Third‑Party.

Modern Workers’ Compensation Section 102:1, Workers’ Compensation as Exclusive Remedy.

Modern Workers’ Compensation Section 103:28, Subcontractors.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of south Carolina Law: Exclusive Remedy; Loss of Consortium. 31 S.C. L. Rev. 158.

Products Liability ‑ An Analysis of the Law Concerning Design and Warning Defects in Workplace Products. 33 S.C. L. Rev. 273 (December 1981).

Slander falls outside scope of exclusive remedy provisions. 45 S.C. L. Rev. 227 (Autumn 1993).

Toxic torts and workers’ compensation at the Savannah River site: The disparate remedies available to those who work for cancer and those who get it for free. Keegan B. Miller, 66 S.C. L. Rev. 861 (Summer 2015).

NOTES OF DECISIONS

In general 1

Common law actions 10

Construction with other laws 2

Dual persona doctrine 7

Employer employee relationship 3

Federal courts 18

Hostile work environment 12.5

Independent contractors 6

Injuries caused by co‑workers 9

Intentional torts 16

Jurisdiction 17

Pleadings 19

Review 21

Sexual harassment 12

Slander 13

Statutory employees 4

Subcontractors 5

Sufficiency of evidence 15

Summary judgment 20

Third parties 8

Tort actions, generally 11

Uninsured motorist benefits 14

1. In general

Where an employer is covered by Workers’ Compensation, this Act is the exclusive remedy of an employee injured in the course and scope of employment. Carrier v. Westvaco Corp., 1992, 806 F.Supp. 1242, affirmed 46 F.3d 1122.

When a plaintiff seeks recovery from a person, other than his employer, for an injury sustained on the job, the employer cannot be found to be the proximate, or legal, cause of the plaintiff’s injuries because the employer is immune from tort liability under the exclusivity provision of the Workers’ Compensation Act. Machin v. Carus Corporation (S.C. 2017) 419 S.C. 527, 799 S.E.2d 468. Workers’ Compensation 2084; Workers’ Compensation 2161

General Assembly intends for employees to seek a remedy from employers for their work‑related injury only through the Workers’ Compensation Commission and not through the circuit courts. Posey v. Proper Mold & Engineering, Inc. (S.C.App. 2008) 378 S.C. 210, 661 S.E.2d 395. Workers’ Compensation 2084

Workers’ Compensation Act provides the exclusive remedy against an employer for an employee’s work‑related accident or injury. Posey v. Proper Mold & Engineering, Inc. (S.C.App. 2008) 378 S.C. 210, 661 S.E.2d 395. Workers’ Compensation 2084

Volunteer firefighter who was injured in automobile accident with second firefighter while both were responding to fire was barred from recovery against second firefighter by exclusive remedy doctrine of Worker’s Compensation Act; in responding to fire, firefighters were conducting the department’s business at time of the accident, and were thus outside the “going and coming rule.” Strickland v. Galloway (S.C.App. 2002) 348 S.C. 644, 560 S.E.2d 448. Workers’ Compensation 2168.1(2)

The majority rule is that one who has obligations under the Workers’ Compensation Act enjoys the immunities under the Act. Freeman Mechanical, Inc. v. J.W. Bateson Co., Inc. (S.C. 1994) 316 S.C. 95, 447 S.E.2d 197. Workers’ Compensation 2084

An injured employee could not maintain an action in the court predicated on the alleged refusal of his employer and his employer’s insurance carrier to pay Workers’ Compensation benefits, since the action involved a situation expressly covered by the Workers’ Compensation Act, and for which the Act provided a remedy, which was exclusive; the Act providing that if an employer and injured employee fails to reach an agreement in regard to compensation within 14 days after the employer has knowledge of the injury, then the worker may make application to the Industrial Commission for a hearing in regard to the matters at issue and for ruling thereon, and further providing that all questions arising under the Act, if not settled by agreement of the parties, should be determined by the Industrial Commission. Cook v. Mack’s Transfer & Storage (S.C.App. 1986) 291 S.C. 84, 352 S.E.2d 296, certiorari denied 292 S.C. 230, 355 S.E.2d 861.

A worker who sustains an injury covered by the Workers’ Compensation Act may not bring a separate action in the courts for damages if the employer and the employer’s insurance carrier allegedly act in bad faith in processing and paying his claim. Cook v. Mack’s Transfer & Storage (S.C.App. 1986) 291 S.C. 84, 352 S.E.2d 296, certiorari denied 292 S.C. 230, 355 S.E.2d 861. Workers’ Compensation 2084; Workers’ Compensation 2161

An employee was not bound to proceed under the Workmen’s Compensation Act where the Act did not ordinarily apply to his employer, since the employer had less than fifteen employees in South Carolina, and the employee had no notice that his employer had elected to come under the Act. Herring v. Lawrence Warehouse Co. (S.C. 1952) 222 S.C. 226, 72 S.E.2d 453.

2. Construction with other laws

The Migrant and Seasonal Agricultural Worker Protection Act (AWPA) (29 USCA Sections 1801 et seq.) ‑ which contains a provision (29 USCA Section 1854) authorizing a private right of action for any person aggrieved by an agricultural employer’s violation of the AWPA ‑ preempts state law to the limited extent that it does not permit states to supplant, rather than supplement, the AWPA’s remedial scheme. Adams Fruit Co., Inc. v. Barrett, U.S.Fla.1990, 110 S.Ct. 1384, 494 U.S. 638, 108 L.Ed.2d 585.

The private right of action available, under the enforcement provisions of the Migrant and Seasonal Agricultural Worker Protection Act (AWPA) (29 USCA Section 1854), to any person aggrieved by an agricultural employer’s violation of the AWPA (29 USCA Sections 1801 et seq.) is unaffected by the availability of remedies under state workers’ compensation law. Adams Fruit Co., Inc. v. Barrett, U.S.Fla.1990, 110 S.Ct. 1384, 494 U.S. 638, 108 L.Ed.2d 585.

When migrant agricultural worker is injured on job and his injury is covered by state workers’ compensation law worker is bound by its provisions, and cannot maintain action under Migrant and Seasonal Agricultural Worker Protection Act (29 USCA Sections 1801 et seq.). Roman v. Sunny Slope Farms, Inc. (C.A.4 (S.C.) 1987) 817 F.2d 1116, certiorari denied 108 S.Ct. 163, 484 U.S. 855, 98 L.Ed.2d 117. Workers’ Compensation 2084

Worker injured on pier while no vessel was alongside was within coverage of Longshoremen and Harbor Workers Compensation Act (33 USCA Sections 901 et seq.) as extended in 1972, but was also within coverage of South Carolina Workmen’s Compensation Act because piers have always been recognized as extensions of land within authority of state and not within authority of LHWCA until 1972 extension. Garvin v. Alumax of South Carolina, Inc. (C.A.4 (S.C.) 1986) 787 F.2d 910, certiorari denied 107 S.Ct. 314, 479 U.S. 914, 93 L.Ed.2d 288.

Rule of immunity of contractor under South Carolina Workmen’s Compensation Act is not in conflict with Longshoremen and Harbor Workers Compensation Act (33 USCA Sections 901 et seq.), despite its different rule of immunity; contractor is therefore immune from liability in common law negligence action of worker injured while doing maintenance work on shiploader owned by contractor. Garvin v. Alumax of South Carolina, Inc. (C.A.4 (S.C.) 1986) 787 F.2d 910, certiorari denied 107 S.Ct. 314, 479 U.S. 914, 93 L.Ed.2d 288. Workers’ Compensation 2165

South Carolina’s worker compensation law preempts claims regarding workplace physical injury, including physical injury resulting from negligent supervision; it also preempts emotional distress resulting from workplace physical injury, and workplace intentional infliction of emotional distress. Colleton v. Charleston Water System, 2016, 225 F.Supp.3d 362. Workers’ Compensation 2093

When a plaintiff seeks recovery from a person, other than his employer, for an injury sustained on the job, if no defense seeks to assign fault to the plaintiff’s employer, there shall be no reference, discussion, evidence, or legal argument relating in any manner to the matter of workers’ compensation; if, however, a defendant asserts a defense that assigns fault for the plaintiff’s injuries to the plaintiff’s employer, the defendant shall, under the well‑established “empty chair” defense, have the right to present such evidence and require the fact‑finder to consider whether the employer’s actions were the cause of the plaintiff’s injuries. Machin v. Carus Corporation (S.C. 2017) 419 S.C. 527, 799 S.E.2d 468. Workers’ Compensation 2234

There is no real inconsistency between a claimant’s entitlement to unemployment compensation for loss of wages through the termination of a job which he could and did perform in his partially disabled condition, and his entitlement to some workmen’s compensation benefits. Harvey v. Art Metal, Inc. (S.C. 1966) 247 S.C. 443, 147 S.E.2d 697.

3. Employer employee relationship

A millinery department in a general retail department store operated by a licensee is part of the trade, business or occupation of the department store owner within the purview of this Title. Corollo v. S. S. Kresge Co. (C.A.4 (S.C.) 1972) 456 F.2d 306, certiorari denied 92 S.Ct. 2440, 407 U.S. 911, 32 L.Ed.2d 686.

An owner is immune from tort liability to its licensee’s employees for injuries sustained in the course and scope of their employment by reason of Code 1962 Section 72‑121. Corollo v. S. S. Kresge Co. (C.A.4 (S.C.) 1972) 456 F.2d 306, certiorari denied 92 S.Ct. 2440, 407 U.S. 911, 32 L.Ed.2d 686.

The term “employer,” as used in the immunity provision of this section [Code 1962 Section 72‑121], was clearly intended to include others than the immediate employer. Chavis v. E. I. Du Pont De Nemours & Co. (C.A.4 (S.C.) 1960) 283 F.2d 929, certiorari denied 81 S.Ct. 748, 365 U.S. 836, 5 L.Ed.2d 745. Workers’ Compensation 350

Where truck driver was injured while standing on pier waiting to have his truck loaded at manufacturer’s plant, driver was acting within course of his employment so as to bring him within provisions of Workers Compensation Law since act of “waiting” was consistent with driver’s contract for hire and was incidental to his employment as truck driver. Carrier v. Westvaco Corp., 1992, 806 F.Supp. 1242, affirmed 46 F.3d 1122. Workers’ Compensation 656

Definition of employer within Section 42‑1‑540 is not limited simply to injured person’s immediate employer; rather Act expands definition to include all those for whom employee is working, either directly or indirectly. McCaskey v. Daniel Intern. Corp. (D.C.S.C. 1977) 442 F.Supp. 1360.

Defendant corporation was plaintiff’s employer within meaning of Section 42‑1‑540 where record showed plaintiff was employed by division within defendant’s consumer product group which had no board of directors, was not separate corporate entity, had no independent status for tax return purposes, and was subject to primary control of defendant corporation, although a degree of decentralization existed in each of defendant’s divisions. Strickland v. Textron, Inc. (D.C.S.C. 1977) 433 F.Supp. 326.

The acquisition, by lease or purchase, the rotation, changing, cross‑changing, inventorying and use of tires is a part of the trade, business and occupation of a trucking company. Mack v. R. C. Motor Lines, Inc. (D.C.S.C. 1973) 365 F.Supp. 416.

There are four elements which determine the right of control, as general basis for employer‑employee relationship: (1) direct evidence of the right or exercise of control; (2) furnishing of equipment; (3) right to fire; and (4) method of payment. Fuller v. Blanchard (S.C.App. 2004) 358 S.C. 536, 595 S.E.2d 831, rehearing denied. Labor And Employment 23

A claimant’s action for injuries arising from the collapse of a faulty scaffolding was barred by the Workers’ Compensation provisions even though the employees who built the faulty scaffolding were “lent employees” in that they were hired by the claimant’s employer from a temporary staffing agency. Nix v. Columbia Staffing, Inc. (S.C.App. 1996) 322 S.C. 277, 471 S.E.2d 718, rehearing denied, certiorari granted.

Workers’ compensation award is authorized only if employer‑employee relationship existed at time of alleged injury, and issue of whether subsequent reinstatement of employee with original effective service date meant that he never left employment of company, and therefore his claim of outrageous conduct arose in course of his employment, is issue of fact. Nash v. AT & T Nassau Metals (S.C.App. 1987) 294 S.C. 248, 363 S.E.2d 695, reversed 298 S.C. 428, 381 S.E.2d 206.

Ordinarily, in determining worker’s compensation employee‑employer relationship, construction work, such as building a factory structure or making electrical installations, is considered outside the trade or business of a manufacturer. Raines v. Gould, Inc. (S.C.App. 1986) 288 S.C. 541, 343 S.E.2d 655. Workers’ Compensation 354

Where employee recovered benefits under workmen’s compensation law for injuries he received while employed by a partnership, and later sought to recover against one of the partners as a joint tortfeasor, the partner would be held an employer of the injured employee, and later action based on negligence against such member of the partnership was barred by the workmen’s compensation law. Daniels v. Roumillat (S.C. 1975) 264 S.C. 497, 216 S.E.2d 174.

Where millinery department of a department store was operated under an agency contract, which provided that the store designate the location of the department (which was not separated from other departments) and that the whole public conduct of the business be in the name of the store, an employee working in the department was not entitled to maintain an action for negligence against the store in the maintenance of its basement stairway, but she was confined to her remedy under this section [Code 1962 Section 72‑121]. Adams v. Davison‑Paxon Co. (S.C. 1957) 230 S.C. 532, 96 S.E.2d 566.

A contract of permanent employment supported only by the forbearance of an injured employee to pursue the provided remedy under the Workmen’s Compensation Law is not enforceable, since neither the employer nor employee had the right to enter into an agreement which evaded or avoided the terms and conditions of the Compensation Act. Gainey v. Coker’s Pedigreed Seed Co. (S.C. 1955) 227 S.C. 200, 87 S.E.2d 486.

4. Statutory employees

Relief under workmen’s compensation act precludes all other injury‑related remedies to which employee might otherwise be entitled, and to escape statutory bar, injured person must not have been performing any work which was part of his trade, business, or occupation at time of injury; individual is performing trade, business, or occupation of employer if individual contracts with employer to provide service which is essential to function of employer’s continued business, even if employer may never have performed same chore with own employees; electrician injured while performing job essential to function of employer’s business is statutory employee under act; “essential to business” standard has not been abandoned in favor of standard by which individual can be found to be statutory employee only if company hiring him has used its own employees in performing similar tasks. Singleton v. J.P. Stevens & Co., Inc. (C.A.4 (S.C.) 1984) 726 F.2d 1011.

A “statutory employee” is limited to the exclusive remedy of the Workmen’s Compensation Act as provided by this section [Code 1962 Section 72‑121]. Corollo v. S. S. Kresge Co. (C.A.4 (S.C.) 1972) 456 F.2d 306, certiorari denied 92 S.Ct. 2440, 407 U.S. 911, 32 L.Ed.2d 686.

The exclusivity provision applies both to direct employees and to statutory employees as defined in Section 42‑1‑400. Carrier v. Westvaco Corp., 1992, 806 F.Supp. 1242, affirmed 46 F.3d 1122.

For purposes of exclusive remedy provision (Section 42‑1‑540), a truck driver, who worked for independent carrier used by manufacturer, was “statutory employee” of manufacturer, where driver was injured while standing on concrete pier waiting for his truck to be loaded at manufacturer’s plant, and where, prior to using contract‑type carriers for the transportation of its goods to customers, manufacturer had equipped and maintained its own trucking division. Carrier v. Westvaco Corp., 1992, 806 F.Supp. 1242, affirmed 46 F.3d 1122. Workers’ Compensation 331

A contractor’s employee who participated in the removal of obsolete equipment to make room for new equipment in a paper mill, and who was injured while engaged in the removal, was a statutory employee of the mill under the provisions of Section 42‑1‑400, where the removal operation was part of the trade, business or occupation of the mill. Furthermore, the employee’s exclusive remedy was under the provisions of Sections 42‑1‑540 and 42‑5‑10. Wright v. Westvaco Corp. (D.C.S.C. 1981) 522 F.Supp. 775. Workers’ Compensation 288; Workers’ Compensation 2164

Exclusivity provision of the Workers’ Compensation Act applies both to direct employees and to those termed statutory employees. Poch v. Bayshore Concrete Products/South Carolina, Inc. (S.C. 2013) 405 S.C. 359, 747 S.E.2d 757. Workers’ Compensation 2084; Workers’ Compensation 2161

Concrete products supplier qualified as “statutory employer” of temporary workers who were injured in work‑related accident at supplier’s leased work site while dismantling equipment used to produce concrete forms, and as such, supplier was immune from liability in tort under the Workers’ Compensation Act’s exclusivity provision; work being performed by temporary workers was an important part of supplier’s business activities, and dismantling casting beds was a necessary and integral part of supplier’s business, which was routinely completed by regular, payroll employees at every facility of supplier. Poch v. Bayshore Concrete Products/South Carolina, Inc. (S.C. 2013) 405 S.C. 359, 747 S.E.2d 757. Workers’ Compensation 2161

Both concrete products supplier, which was statutory employer of temporary workers who were injured on supplier’s premises, and supplier’s parent company could have lost their tort immunity from temporary workers’ tort suit had they failed to procure workers’ compensation coverage for workers at the time of hiring, but supplier and its parent company preserved their immunity, as both retained workers’ compensation insurance that covered workers, had staffing agency failed to secure coverage. Poch v. Bayshore Concrete Products/South Carolina, Inc. (S.C. 2013) 405 S.C. 359, 747 S.E.2d 757. Workers’ Compensation 2100

Worker is a “statutory employee” of owner under the Workers’ Compensation Act, and Act provides exclusive remedy against owner for worker’s work‑related injury, if any of the following three factors is shown: (1) the activity is an important part of the trade or business, (2) the activity is a necessary, essential and integral part of the business, or (3) the identical activity in question has been performed by employees of the principal employer. Johnson v. Jackson (S.C.App. 2012) 401 S.C. 152, 735 S.E.2d 664, certiorari denied. Workers’ Compensation 187

Concrete products supplier that hired temporary workers to perform site cleanup and equipment dismantling on its leased work site was the workers’ statutory employer and, thus, was entitled to immunity under exclusivity provision of the Workers’ Compensation Act with regard to work‑related accident in which one worker was killed and the other was severely injured; supplier had contracted with the workers’ employer to provide additional workers for its site, supplier’s own employees assisted in the same type of removal work, and removal work performed by the workers was essential to supplier’s business because its lease agreement required supplier to leave the site in the same or better condition. Poch v. Bayshore Concrete Products/South Carolina, Inc. (S.C.App. 2009) 386 S.C. 13, 686 S.E.2d 689, rehearing denied, certiorari granted, affirmed as modified 405 S.C. 359, 747 S.E.2d 757. Workers’ Compensation 2161

Concrete products supplier’s alleged fraud in misrepresenting the work to be performed by temporary workers at its leased work site, and the alleged lack of meeting of the minds between supplier and temporary workers’ employer, did not bar supplier from asserting entitlement, as the workers’ statutory employer, to immunity under exclusivity provision of the Workers’ Compensation Act with regard to work‑related accident in which one worker was killed and the other was severely injured; neither fraud nor a lack of the meeting of the minds qualified as exceptions to the exclusivity provision. Poch v. Bayshore Concrete Products/South Carolina, Inc. (S.C.App. 2009) 386 S.C. 13, 686 S.E.2d 689, rehearing denied, certiorari granted, affirmed as modified 405 S.C. 359, 747 S.E.2d 757. Workers’ Compensation 2161

Parent company of concrete products supplier, which was statutory employer of temporary workers who sustained severe or fatal injuries at supplier’s leased work site, was an upstream statutory employer of the temporary workers and, thus, was entitled to immunity under exclusivity provision of the Workers’ Compensation Act; parent company’s salaried employees exercised control over the hourly employees of supplier, it was important to parent company for supplier to be successful and profitable in the business venture, supplier and parent company maintained intertwined operations, and supplier and parent company’s business activities were similar, with many of the same salaried employees. Poch v. Bayshore Concrete Products/South Carolina, Inc. (S.C.App. 2009) 386 S.C. 13, 686 S.E.2d 689, rehearing denied, certiorari granted, affirmed as modified 405 S.C. 359, 747 S.E.2d 757. Workers’ Compensation 2161

Any consideration by trial court of expert’s affidavit that went to the ultimate issue of whether temporary workers were statutory employees of concrete products supplier, for purposes of tort immunity under exclusivity provision of the Workers’ Compensation Act, was not outcome determinative with regard to trial court’s grant of supplier’s and its parent company’s motion for summary judgment or dismissal, in personal injury and wrongful death actions stemming from work‑related accident involving temporary workers, and thus reversal of trial court’s dismissal was not required, where the supplier’s and parent company’s exclusivity immunity were clear. Poch v. Bayshore Concrete Products/South Carolina, Inc. (S.C.App. 2009) 386 S.C. 13, 686 S.E.2d 689, rehearing denied, certiorari granted, affirmed as modified 405 S.C. 359, 747 S.E.2d 757. Workers’ Compensation 2242

Truck driver employed by common carrier was “statutory employee” of manufacturer of plastic injection products, which had contracted with common carrier to provide supplemental transportation, because the identical activity was previously performed by manufacturer’s own employees, and because truck driver was statutory employee, the Workers’ Compensation Commission had exclusive original jurisdiction to hear truck driver’s claims against manufacturer for injuries he sustained when hook attached to crane, operated by manufacturer’s employee, came loose and struck him; manufacturer had contracted with common carrier to provide supplemental transportation because manufacturer’s own employees were unavailable for pick up or delivery. Posey v. Proper Mold & Engineering, Inc. (S.C.App. 2008) 378 S.C. 210, 661 S.E.2d 395. Workers’ Compensation 210; Workers’ Compensation 1087

Pilot, who was employed by helicopter transportation company, was not a statutory employee of hospital, and thus exclusive remedy provision of Workers’ Compensation Act did not apply to pilot’s personal injury action that was brought against hospital and hospital’s employee, although air transportation of patients helped facilitate hospital’s treatment of critically injured patients; hospital was in business of providing health care, not transportation, helicopter service was not necessary, essential, or integral to hospital’s operation, hospital did not have Federal Aviation Administration (FAA) certificate, and hospital had never directly employed helicopter pilots. Cooke v. Palmetto Health Alliance (S.C.App. 2005) 367 S.C. 167, 624 S.E.2d 439, rehearing denied. Workers’ Compensation 2161

Truck driver who was injured while transporting utility poles was not a statutory employee of utility pole manufacturer, and thus his tort action against manufacturer was not barred by exclusivity provision of Workers’ Compensation Act; truck was loaded by manufacturer’s employees, and truck was not owned or operated by manufacturer. Olmstead v. Shakespeare (S.C.App. 2002) 348 S.C. 436, 559 S.E.2d 370, rehearing denied, certiorari granted, affirmed as modified 354 S.C. 421, 581 S.E.2d 483. Workers’ Compensation 2158

Whether worker is statutory employee, such that his or her sole remedy for work‑related injuries is to seek relief under Workers’ Compensation Act, is jurisdictional inquiry to be resolved by court. Neese v. Michelin Tire Corp. (S.C.App. 1996) 324 S.C. 465, 478 S.E.2d 91, certiorari denied. Workers’ Compensation 1939.11(3)

An employee of a contractor, who was injured while removing asbestos from the owner’s premises, was a statutory employee of the owner under Section 42‑1‑400, and thus his recovery was limited to workers’ compensation benefits under Section 42‑1‑540, where (1) preventive maintenance of the premises, including removal and reinstallation of insulation, was an ongoing process, and (2) the owners’ employees had previously routinely removed and disposed of asbestos until the owner hired the outside contractor, who specialized in asbestos removal. Wheeler v. Morrison Machinery Co. (S.C.App. 1993) 313 S.C. 440, 438 S.E.2d 264. Workers’ Compensation 288

A shopping mall employee was a statutory employee of the corporation which owned the mall, even though the employee was hired and paid by a management company, where the mall was the corporation’s sole business, and the work being performed by the management company was essential to its operation. Carter v. Florentine Corp., Inc. (S.C. 1992) 310 S.C. 228, 423 S.E.2d 112. Workers’ Compensation 316

5. Subcontractors

Once it is established that the work being done by the subcontractor is part of the owner’s general business, the employees of the subcontractor become statutory employees of the owner even though their immediate employer is an independent contractor. Corollo v S. S. Kresge Co. (1972, CA4 SC) 456 F2d 306, cert den 407 US 911, 32 L Ed 2d 686, 92 S Ct 2440. Mack v R. C. Motor Lines, Inc. (1973, DC SC) 365 F Supp 416.

An owner’s liability either for payment of compensation or tort damages does not rest upon the degree of control retained by the owner over the injured employee of a subcontractor. Corollo v. S. S. Kresge Co. (C.A.4 (S.C.) 1972) 456 F.2d 306, certiorari denied 92 S.Ct. 2440, 407 U.S. 911, 32 L.Ed.2d 686.

Both an owner of a business and his independent contractor, or a principal contractor and his subcontractor, where they are the parties concerned, are exempt from suit. Blue Ridge Rural Elec. Co‑op., Inc. v. Byrd (C.A.4 (S.C.) 1956) 238 F.2d 346, certiorari granted 77 S.Ct. 557, 352 U.S. 999, 1 L.Ed.2d 544, reversed 78 S.Ct. 893, 356 U.S. 525, 2 L.Ed.2d 953, rehearing denied 78 S.Ct. 1366, 357 U.S. 933, 2 L.Ed.2d 1375.

General contractor was statutory employer of subcontractor’s injured employee within meaning of workmen’s compensation statute, and was therefore immune to injured employee’s common‑law suit for damages, even though employer of general contractor originally procured subcontractor’s services; the subcontractor’s later contract with the general contractor shifted the obligation, responsibilities, and supervisory control with respect to the project from the employer of general contractor to general contractor itself, at the same time that it shifted responsibility for paying the subcontractor. McCaskey v. Daniel Intern. Corp. (D.C.S.C. 1977) 442 F.Supp. 1360.

Employee of subcontractor’s sub‑subcontractor can be employee of, and therefore have as statutory employer, general contractor on job. McCaskey v. Daniel Intern. Corp. (D.C.S.C. 1977) 442 F.Supp. 1360. Workers’ Compensation 351

Once it is established that the work being done by the subcontractor was a part of the general business of the owner within the meaning of Code 1962 Section 72‑111, even though the subcontractor might occupy the status of an independent contractor, the employees of the subcontractor so engaged are limited under this section [Code 1962 Section 72‑121] to the exclusive remedy of workmen’s compensation laws. Mack v. R. C. Motor Lines, Inc. (D.C.S.C. 1973) 365 F.Supp. 416.

Failure of concrete products supplier to collect insurance documentation when temporary workers were engaged to perform work on supplier’s leased work site did not preclude supplier from being the workers’ statutory employer and, thus, entitled to immunity under exclusivity provision of the Workers’ Compensation Act with regard to work‑related accident in which one worker was killed and the other was severely injured; statute requiring higher‑tier subcontractor, contractor or project owner to collect documentation of insurance concerned only eligibility for reimbursement from Uninsured Employer’s Fund and had no bearing on the supplier’s statutory employer status. Poch v. Bayshore Concrete Products/South Carolina, Inc. (S.C.App. 2009) 386 S.C. 13, 686 S.E.2d 689, rehearing denied, certiorari granted, affirmed as modified 405 S.C. 359, 747 S.E.2d 757. Workers’ Compensation 359

Statutory employer‑employee relationship existed between plant owner and worker who was crushed to death by machinery while working as a subcontractor at plant, and thus, exclusive remedy for worker’s estate was to file workers’ compensation claim; keeping dye vat under repair was important and necessary part of plant owner’s business, and owner’s employees also performed work on vat. Edens v. Bellini (S.C.App. 2004) 359 S.C. 433, 597 S.E.2d 863. Workers’ Compensation 352; Workers’ Compensation 2164

Once it is established that work being done by subcontractor was part of general business of owner within meaning of provision of Workers’ Compensation Act governing statutory employees, even though subcontractor might occupy status of independent contractor, employees of subcontractor so engaged are limited to Act’s exclusive remedy. Neese v. Michelin Tire Corp. (S.C.App. 1996) 324 S.C. 465, 478 S.E.2d 91, certiorari denied. Workers’ Compensation 2084

The prime contractor is secondarily liable for work‑related injuries to the employees of the subcontractor; however, the subcontractor has no such secondary liability for employees of the prime contractor or employees of other subcontractors on the job. Freeman Mechanical, Inc. v. J.W. Bateson Co., Inc. (S.C. 1994) 316 S.C. 95, 447 S.E.2d 197. Workers’ Compensation 360

A subcontractor may be sued in tort for injuries to the prime contractor or other subcontractor’s employees since no statutory obligation exists under the Workers’ Compensation Act, and therefore the subcontractor does not enjoy the protection of the Act. Freeman Mechanical, Inc. v. J.W. Bateson Co., Inc. (S.C. 1994) 316 S.C. 95, 447 S.E.2d 197. Workers’ Compensation 2165

Plaintiff’s negligence action against a subcontractor was not barred by the exclusive remedy provision of worker’s compensation where the plaintiff was neither employed by the subcontractor nor did the subcontractor have any worker’s compensation liability to the plaintiff. Day v. Sanders Bros., Inc. (S.C.App. 1993) 315 S.C. 95, 431 S.E.2d 629. Workers’ Compensation 2166

The exclusivity provisions of Sections 42‑1‑540 and 42‑5‑10 do not extend immunity to a subcontractor sued for negligence by the employee of the business owner, even though under Section 42‑1‑400 the subcontractor becomes a “statutory employee” of the owner for the purposes of workers’ compensation liability, and thus negligence and loss of consortium claims by the employee and her spouse against the subcontractor were not barred. Boone v. Huntington and Guerry Elec. Co. (S.C. 1993) 311 S.C. 550, 430 S.E.2d 507, rehearing denied.

A negligence action based on the death of a subcontractor was barred by the prior payment of benefits under the Workers’ Compensation Act where the subcontractor was a self‑employed welder and the sole proprietor of a business hired to repair a machine used in the employer’s business operation, the subcontractor was fatally injured while repairing the machine, and his beneficiaries elected to and did receive benefits under the Act. Smith v. T.H. Snipes & Sons, Inc. (S.C. 1991) 306 S.C. 289, 411 S.E.2d 439.

“Upstream” subcontractors were statutory employers of an employee of a sub‑sub‑contractor under the Workers’ Compensation Act, and thus were immune from tort liability. Brittingham v. Williams Sign Erectors, Inc. (S.C.App. 1989) 299 S.C. 259, 384 S.E.2d 319. Workers’ Compensation 350

Worker’s Compensation Act did not provide exclusive remedy for worker injured while employed by a subcontractor to install an electrical system for a plant being constructed for a manufacturer by a general contractor, since the electrical installation was not part of the trade or business of the manufacturer which was in the business of manufacturing and selling of batteries and related products and, although the manufacturer had been involved in the construction of numerous facilities on property which it owned or leased and managed, the manufacturer did not have a construction division and none of the construction work was performed by its regular employees but, rather, the manufacturer merely prepared the specific designs for certain parts of the facilities, or oversaw such designs, approved engineering plans and, in some instances, provided supervisory personnel to provide general assistance in the contracting of the contractors and subcontractors and of coordinating their activities. Raines v. Gould, Inc. (S.C.App. 1986) 288 S.C. 541, 343 S.E.2d 655.

Whether the Worker’s Compensation Act provides the exclusive remedy for an injured employee of a subcontractor depends upon whether the work being performed by the subcontractor at the time of the injury is a part of the owner’s trade, business or occupation. Henderson v. Gould, Inc. (S.C.App. 1986) 288 S.C. 261, 341 S.E.2d 806.

This section [Code 1962 Section 72‑121] limits the remedy of an employee of subcontractors who is a statutory employee of an owner under Code 1962 Section 72‑111 so that the employee may not maintain a negligence action against the employer. Adams v. Davison‑Paxon Co. (S.C. 1957) 230 S.C. 532, 96 S.E.2d 566.

6. Independent contractors

Physician who performed physical examinations for company’s employees was an independent contractor, not an employee and, thus, exclusivity provision of Workers’ Compensation Act did not bar medical malpractice claim, where physician made medical recommendations without any direct supervision or instruction from company, was not on company payroll, did not receive compensation from company, was not involved in negotiating contract his employer had with company, and was unaware of its terms. Fuller v. Blanchard (S.C.App. 2004) 358 S.C. 536, 595 S.E.2d 831, rehearing denied. Workers’ Compensation 2253

In general, treating physicians, as third parties to the employer‑employee relationship, do not fall within the immunity provisions of the Workers’ Compensation Act and are subject to suit. Fuller v. Blanchard (S.C.App. 2004) 358 S.C. 536, 595 S.E.2d 831, rehearing denied. Workers’ Compensation 2253

Although physician was independent contractor of company, physician owed duty of care to company employee patient to inform employee of adverse cancer screening, where there was established protocol, requiring physician to inform employees of any adverse test results and to advise them to seek additional medical treatment as necessary. Fuller v. Blanchard (S.C.App. 2004) 358 S.C. 536, 595 S.E.2d 831, rehearing denied. Health 709(2)

7. Dual persona doctrine

For purposes of the dual‑persona doctrine exception to Workers’ Compensation Act’s exclusivity provision, pursuant to which an employer may become a third person, vulnerable to tort suit by an employee, if and only if it possesses a second persona so completely independent from and unrelated to its status as employer that by established standards the law recognizes that persona as a separate legal person, if the claimant could not have sued the predecessor in tort if the merger had not occurred, then claimant cannot sue the successor in tort; this rationale is based on the idea that the doctrine should not be applied to allow a merger to increase, rather than preserve, inchoate liability. Mendenall v. Anderson Hardwood Floors, LLC (S.C. 2013) 401 S.C. 558, 738 S.E.2d 251. Workers’ Compensation 2162

Dual persona doctrine, pursuant to which an employer may become a third person, vulnerable to tort suit by an employee, if and only if it possesses a second persona so completely independent from and unrelated to its status as employer that by established standards the law recognizes that persona as a separate legal person, is an exception to the exclusivity provision of the Workers’ Compensation Act; abrogating, Tatum v. Medical University of South Carolina, 346 S.C. 194, 552 S.E.2d 18. Mendenall v. Anderson Hardwood Floors, LLC (S.C. 2013) 401 S.C. 558, 738 S.E.2d 251. Workers’ Compensation 2162

Under dual persona doctrine, Workers’ Compensation Act’s exclusivity provisions did not bar state university employee’s action against university for injuries allegedly resulting from negligent medical care rendered by university‑employed surgeon who treated employee for work‑related injury; employee was not working in capacity for which university hired her when she was injured by physician’s alleged malpractice, and because university’s role as employer ended when it referred employee to its surgeon for treatment, and because university then took on legally distinct persona of her treating hospital, university’s medical treatment of employee was same as its treatment of any member of general public and bore no relation to its other persona as employer. Tatum v. Medical University of South Carolina (S.C.App. 1999) 335 S.C. 499, 517 S.E.2d 706, rehearing denied, certiorari granted, reversed 346 S.C. 194, 552 S.E.2d 18. Workers’ Compensation 2253

South Carolina recognizes the dual persona doctrine in cases where the employer‑hospital and its physicians negligently treat an employee for a work‑related accident and in so doing, exacerbate the injury. Tatum v. Medical University of South Carolina (S.C.App. 1999) 335 S.C. 499, 517 S.E.2d 706, rehearing denied, certiorari granted, reversed 346 S.C. 194, 552 S.E.2d 18. Workers’ Compensation 2253

Assuming that dual‑capacity doctrine may be applied in some instances, it is clear that general contractor may not be held liable as either architect or engineer where employee of contractor was killed when roof he was constructing collapsed. Parker v. Williams and Madjanik, Inc. (S.C. 1980) 275 S.C. 65, 267 S.E.2d 524.

8. Third parties

Workers’ compensation carrier enjoys the employer’s workers’ compensation immunity only to the extent the carrier functions as the workers’ compensation carrier. Immunity does not extend to compensation carrier when it acts as third party in manner unrelated to its function as compensation carrier. Sanders v. Doe, 1993, 831 F.Supp. 886. Workers’ Compensation 2161

The exclusive remedy provision of the Workers’ Compensation Act limits the employee’s remedy “as against his employer”; thus, where the injury is due to a third party’s negligence, a claimant can collect workers’ compensation benefits and sue the third party responsible for causing the injuries. Mendenall v. Anderson Hardwood Floors, LLC (S.C. 2013) 401 S.C. 558, 738 S.E.2d 251. Workers’ Compensation 2084; Workers’ Compensation 2158

A workers’ compensation insurance carrier enjoys the employer’s immunity under the Workers’ Compensation Act except when the carrier stands in the position of a third party unrelated to its function as a compensation carrier. For example, carriers may perform safety inspections to assess risk and reduce on‑the‑job injuries in order to minimize benefit payments and premium increases; in such a case, safety inspections would be integral to the function of a workers’ compensation carrier. On the other hand, a carrier may contract with an employer as an independent provider of safety inspections undertaking the employer’s legal duty to provide a reasonably safe workplace; in this situation, the carrier would be performing as a third party and would not be immune from liability. Evidence of such an agreement could include specific contractual language or payment of additional fees for these services. Ancrum v. U.S. Fidelity & Guar. Co. (S.C. 1989) 301 S.C. 32, 389 S.E.2d 645.

9. Injuries caused by co‑workers

Under Workers’ Compensation Act’s exclusivity provision, immunity is conferred not only on the direct employer but also on co‑employees. Posey v. Proper Mold & Engineering, Inc. (S.C.App. 2008) 378 S.C. 210, 661 S.E.2d 395. Workers’ Compensation 2168.1(2)

10. Common law actions

Dual capacity doctrine allowing injured employee to retain common law cause of action under certain exceptional circumstances against employer who is also manufacturer of allegedly defective product which caused employee’s injury, has not been applied in South Carolina; whatever merits of doctrine, it is not applicable where plaintiff’s injury was not incidental to employment, although directly related to it. Strickland v. Textron, Inc. (D.C.S.C. 1977) 433 F.Supp. 326.

A common law cause of action is not barred by Section 42‑1‑540 of the Workers’ Compensation Act if the employer acted with a deliberate or specific intent to injure the employee; however, this exemption does not apply to injuries that are merely “substantially certain” to result from an employer’s act. Peay v. U.S. Silica Co. (S.C. 1993) 313 S.C. 91, 437 S.E.2d 64. Workers’ Compensation 2093

In case involving assault by fellow employee, claimant has option to claim workers’ compensation or sue employer under common law; where assault was committed by fellow employee, who was not alter ego of company, exclusive aspect of workers’ compensation law applied. Boulware v. Mills (S.C.App. 1987) 294 S.C. 24, 362 S.E.2d 184.

The Workers’ Compensation Act provides an exclusive system of compensation in derogation of common‑law rights and is not cumulative or supplemental thereto, but wholly substitutional. Cook v. Mack’s Transfer & Storage (S.C.App. 1986) 291 S.C. 84, 352 S.E.2d 296, certiorari denied 292 S.C. 230, 355 S.E.2d 861.

There is nothing in this section [Code 1962 Section 72‑121] evincing an intent on the part of the General Assembly to either abolish or assign to an employer a husband’s common‑law right of action against a third party for loss of consortium resulting from injuries to his wife. Crowder v. Carroll (S.C. 1968) 251 S.C. 192, 161 S.E.2d 235.

An employer’s defense that his employee’s remedy comes exclusively under the Compensation Act and the attempted common‑law cause of action set up in a complaint can be made the subject only of a claim under the Compensation Law, should not ordinarily be stricken from the answer of the employer. Thompson v. J.A. Jones Const. Co. (S.C. 1942) 199 S.C. 304, 19 S.E.2d 226.

11. Tort actions, generally

An owner by reason of this section [Code 1962 Section 72‑121] is immune from tort liability to its licensee’s employees for injuries sustained in the course and scope of their employment. Corollo v. S. S. Kresge Co. (C.A.4 (S.C.) 1972) 456 F.2d 306, certiorari denied 92 S.Ct. 2440, 407 U.S. 911, 32 L.Ed.2d 686.

Prison inmate who was injured while working in jail kitchen cannot maintain suit for negligence of prison officials since such action is barred by exclusive remedy provision of Workers’ Compensation Act. Arnold v. South Carolina Dept. of Corrections, 1994, 843 F.Supp. 110. Workers’ Compensation 2084

When a plaintiff seeks recovery from a person, other than his employer, for an injury sustained on the job, the court cannot allow the jury to apportion fault against the non‑party employer by placing the name of the employer on the verdict form. Machin v. Carus Corporation (S.C. 2017) 419 S.C. 527, 799 S.E.2d 468. Workers’ Compensation 2243

When a plaintiff seeks recovery from a person, other than his employer, for an injury sustained on the job, the employer can be found by the fact‑finder to have been responsible for the plaintiff’s injuries. Machin v. Carus Corporation (S.C. 2017) 419 S.C. 527, 799 S.E.2d 468. Workers’ Compensation 2161

Exclusivity provision of the Workers’ Compensation Act precludes an employee from maintaining a tort action against an employer where the employee sustains a work‑related injury. Poch v. Bayshore Concrete Products/South Carolina, Inc. (S.C. 2013) 405 S.C. 359, 747 S.E.2d 757. Workers’ Compensation 2084

Workers’ Compensation Act is the exclusive remedy against an employer for an employee’s work‑related accident or injury; the exclusivity provision of the Act precludes an employee from maintaining a tort action against an employer where the employee sustains a work‑related injury. Johnson v. Jackson (S.C.App. 2012) 401 S.C. 152, 735 S.E.2d 664, certiorari denied. Workers’ Compensation 2084

Workers’ compensation claimant was barred from recovering against employer under the Workers’ Compensation Act, where claimant filed a tort action against employer, claimant obtained a $900,000 default judgment against employer, and claimant failed to provide notice of the civil action to the workers’ compensation commission. Wise v. Wise (S.C.App. 2011) 394 S.C. 591, 716 S.E.2d 117, rehearing denied. Workers’ Compensation 1103

Exclusivity provision of the Workers’ Compensation Act precludes an employee from maintaining a tort action against an employer where the employee sustains a work‑related injury. Posey v. Proper Mold & Engineering, Inc. (S.C.App. 2008) 378 S.C. 210, 661 S.E.2d 395. Workers’ Compensation 2084

An employee negligently injured by a co‑employee conducting the employer’s business may not hold the co‑employee personally liable in tort, but must instead rely upon the remedies provided by the Workers’ Compensation Act. Fuller v. Blanchard (S.C.App. 2004) 358 S.C. 536, 595 S.E.2d 831, rehearing denied. Workers’ Compensation 2168.1(2)

An injured employee was not barred from bringing a negligence action against an electrical contractor working for the employer where the contractor ran a conduit across a roadway and the employee tripped thereon; since the contractor had no workers’ compensation liability to the employee, there was no tort immunity to the lawsuit. Boone v. Huntington and Guerry Elec. Co. (S.C.App. 1992) 307 S.C. 529, 416 S.E.2d 212, rehearing denied, certiorari granted, affirmed 311 S.C. 550, 430 S.E.2d 507.

An employee’s personal injury action against her employer and supervisor was barred by the exclusive remedy provision of the Workers’ Compensation Act where she alleged that she was subjected to a pattern of verbal, physical, and emotional harassment and abuse by her supervisor, who was conducting the employer’s business, the abuse was at the place of business and concerned her work performance, and she was claiming emotional distress and lost income based upon the abuse. Dickert v. Metropolitan Life Ins. Co. (S.C.App. 1991) 306 S.C. 311, 411 S.E.2d 672, as amended, reentered, affirmed in part, reversed in part 311 S.C. 218, 428 S.E.2d 700, modified on rehearing.

Claimant has no right to proceed with common law claim against employer where he has recovered on workers’ compensation claim, because right to seek workers compensation claim from employer is intended to bar all actions against employer where personal injury to employee comes within Act; while Act does not exclude remedy in tort where assault was committed by employer, assault by fellow employee does fall within remedy under Act. Boulware v. Mills (S.C.App. 1987) 294 S.C. 24, 362 S.E.2d 184.

All actions against an employer are barred under Section 42‑1‑540 where a personal injury to an employee comes within the Act. It is fundamental that if an accident arising out of and in the course of employment results in physical injury or trauma, and mental injuries are caused by the same accident, the remedy for all injuries lies solely under the Act. Mental injuries resulting from the same accident may not be segregated in an attempt to render the Act non‑exclusive with respect to the mental stress. Moreover, a tort action may not be brought against the employer regardless of whether the particular injury suffered is subject to actual compensation. Doe v. South Carolina State Hosp. (S.C.App. 1985) 285 S.C. 183, 328 S.E.2d 652.

Husband is included among those listed in Section 42‑1‑540, and accordingly is barred from bringing action for loss of consortium against wife’s employer. Lowery v. Wade Hampton Co. (S.C. 1978) 270 S.C. 194, 241 S.E.2d 556.

12. Sexual harassment

In an action against an employer alleging emotional harm caused by the sexual harassment of a co‑employee, the co‑employee would not be held to be the alter ego of the company for purposes of the exclusive remedy provision of the Workers’ Compensation Act, Section 42‑1‑540, where he was merely the office manager and the employee’s supervisor; only the “dominant corporate owners and officers” may be alter egos of the company. Dickert v. Metropolitan Life Ins. Co. (S.C. 1993) 311 S.C. 218, 428 S.E.2d 700, modified on rehearing.

A co‑employee’s intentional sexual harassment of the employee was not an ordinary incident of employment, even though the conduct persisted through an extended period, since the employee could not have anticipated the conduct at the time of her employment; thus, the harassment was an “accident” for purposes of bringing the employee’s suit alleging emotional harm within the exclusive remedy provision of the Workers’ Compensation Act. Dickert v. Metropolitan Life Ins. Co. (S.C. 1993) 311 S.C. 218, 428 S.E.2d 700, modified on rehearing.

An action against an employer alleging emotional harm as a result of sexual harassment by a co‑employee was barred by the exclusivity provisions of the Workers’ Compensation Act, even though the employee suffered no disability, since mental trauma resulting from a physical assault is a covered injury. Dickert v. Metropolitan Life Ins. Co. (S.C. 1993) 311 S.C. 218, 428 S.E.2d 700, modified on rehearing.

A cause of action for invasion of privacy, brought against an employer as a result of sexual harassment by a co‑employee, was barred by the exclusivity provisions of the Workers’ Compensation Act, even though certain invasion of privacy claims alleging a proprietary loss do fall outside the scope of the act, since the employee alleged emotion harm, and thus her claim was of a personal nature. Dickert v. Metropolitan Life Ins. Co. (S.C. 1993) 311 S.C. 218, 428 S.E.2d 700, modified on rehearing.

12.5. Hostile work environment

African‑American employee’s South Carolina claims that employer failed to properly train and supervise employees or investigate claims of racial discrimination in a hostile work environment fell exclusively within the scope of the South Carolina Workers’ Compensation Act. Addison v. CMH Homes, Inc., 2014, 47 F.Supp.3d 404, appeal dismissed. Workers’ Compensation 2093

13. Slander

An employee’s emotional injuries, caused by a co‑employee’s slanderous comments, arose out of and in the course of her employment where (1) the conduct began after the employees shared a car pool to work, (2) the vast majority and the most egregious of the conduct alleged occurred while the parties were at work, (3) the employee reported the co‑employee’s conduct to the employer several times, and (4) the employer issued disciplinary notices to the co‑employee; thus, a causal relationship existed between the conditions under which the employee’s work was to be performed and her resulting injury. Loges v. Mack Trucks, Inc. (S.C. 1992) 308 S.C. 134, 417 S.E.2d 538.

An employee’s claim that her employer’s negligence was the proximate cause of her emotional injury, based on the comments of a co‑employee which occurred on the employer’s premises or had its origin with the employer, was not barred by the exclusivity provision of the Workers’ Compensation Act, Section 42‑1‑540, since the gravamen of the employee’s claim was slander, and slander actions are not barred by the exclusivity provision. Loges v. Mack Trucks, Inc. (S.C. 1992) 308 S.C. 134, 417 S.E.2d 538.

A plaintiff’s claim for slander was not barred by the exclusive remedy provisions of the Workers’ Compensation Act where the plaintiff’s manager, in front of other employees and customers and over the public address system, made statements implying that the plaintiff was having an adulterous affair with another employee and was carrying his child, since the harm flowing from an act of slander is not a “personal injury” within the Act. Dockins v. Ingles Markets, Inc. (S.C. 1991) 306 S.C. 287, 411 S.E.2d 437.

14. Uninsured motorist benefits

Section 42‑1‑540 does not preclude plaintiff’s recovery of uninsured motorist benefits from his employer’s insurer of company vehicle which he was driving at time of accident. Sanders v. Doe, 1993, 831 F.Supp. 886.

The exclusivity provision of the workers’s compensation law, Section 42‑1‑540, did not bar a city employee’s claim against a self‑insured city for uninsured motorist benefits since insurance benefits sound in contract, and under the workers’ compensation scheme the employer enjoys immunity only from tort actions brought by its employees. Wright v. Smallwood (S.C. 1992) 308 S.C. 471, 419 S.E.2d 219. Workers’ Compensation 2088

15. Sufficiency of evidence

Weight of the evidence supported finding that concrete products supplier was the alter ego of its parent company, and because the two businesses could be viewed as only one economic entity, parent company was immune, under workers’ compensation law, from tort actions brought by temporary workers who were injured in work‑related accident at supplier’s leased work site; the two businesses did not maintain separate identities, as one individual was president of both businesses, one workers’ compensation policy covered all businesses, all of billing invoices and normal correspondence for supplier were sent to its parent company, hiring and firing of salaried employees at supplier’s facility was done by employee of parent company, and the two businesses did not hold themselves out to their employees as separate entities. Poch v. Bayshore Concrete Products/South Carolina, Inc. (S.C. 2013) 405 S.C. 359, 747 S.E.2d 757. Workers’ Compensation 2161

16. Intentional torts

Under South Carolina law, Worker’s Compensation Act is the exclusive remedy for claim of outrage, otherwise known as intentional infliction of emotional stress. Ward v. City of North Myrtle Beach, 2006, 457 F.Supp.2d 625. Workers’ Compensation 2093

Former employee’s claim of intentional infliction of emotional distress against his former employer and employer’s director of occupational health alleging that former employer, fellow employees, and law enforcement conspired with each other to have him arrested and involuntarily committed after speaking in favor of a union was barred by exclusivity provision of Workers’ Compensation Act; nothing in record suggested that former employer or employer’s director of occupational health were dominant corporate owners or officers. McClain v. Pactiv Corp. (S.C.App. 2004) 360 S.C. 480, 602 S.E.2d 87, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 373 S.C. 98, 644 S.E.2d 65. Workers’ Compensation 2093; Workers’ Compensation 2168.1(3)

A common‑law intentional tort cause of action will not be barred by the exclusivity provisions of the Workers’ Compensation Act when the employer manifests a deliberate intent to injure the employee; this exception is applicable to the intentional infliction of emotional distress. Edens v. Bellini (S.C.App. 2004) 359 S.C. 433, 597 S.E.2d 863. Workers’ Compensation 2093

Estate of worker crushed to death at plant could not maintain negligence action against plant owner and employees under intentional‑tort exception to exclusivity provision of the Workers’ Compensation Act; owner and employees had no deliberate or specific intent to injure worker by disabling safety mats in area where worker was killed. Edens v. Bellini (S.C.App. 2004) 359 S.C. 433, 597 S.E.2d 863. Workers’ Compensation 2164; Workers’ Compensation 2168.1(2)

An action against a co‑employee alleging emotional harm as a result of sexual harassment would not be barred by the exclusivity provisions of the Workers’ Compensation Act, even though a co‑employee who negligently injures another employee while in the scope of his employment is immune under the act and cannot be held personally liable, since it is against public policy to extend immunity to the intentional tortious acts of co‑employees. Dickert v. Metropolitan Life Ins. Co. (S.C. 1993) 311 S.C. 218, 428 S.E.2d 700, modified on rehearing.

An employer was entitled to summary judgment on an employee’s allegations of intentional infliction of emotional distress, assault, and battery, on grounds of the exclusivity provision of the Workers’ Compensation Act, Section 42‑1‑540, even though the employee suffered no physical disability or loss compensable thereunder, where the employee claimed that her employer’s negligence was the proximate cause of her injury arising from the slanderous conduct of a co‑employee; a distinction must be drawn between an injury excluded under the fundamental coverage provisions of the Act and an injury which is covered, but for which, under the facts of the particular case, no compensation is payable. Loges v. Mack Trucks, Inc. (S.C. 1992) 308 S.C. 134, 417 S.E.2d 538.

The exclusivity provision of the Workers’ Compensation Act does not bar a common law action against an employer for intentional infliction of emotional distress. The intentional and outrageous nature of the act removes it from the realm of an “accidental” injury. McSwain v. Shei (S.C. 1991) 304 S.C. 25, 402 S.E.2d 890. Workers’ Compensation 2093

Exclusivity provision of South Carolina Workers’ Compensation Act is of uncertain application where gravamen of action is for outrageous conduct alleging “willful and malicious wrongful conduct”; Section 42‑1‑540 is operative only where injury is by accident. Nash v. AT & T Nassau Metals (S.C.App. 1987) 294 S.C. 248, 363 S.E.2d 695, reversed 298 S.C. 428, 381 S.E.2d 206.

17. Jurisdiction

This section [Code 1962 Section 72‑121] specifically excludes all rights and remedies of an employee, except as provided in the Act, wherein and whereby exclusive jurisdiction is vested in the Industrial Commission, and any doubt thereabout is removed when Code 1962 Sections 72‑131 and 72‑132 are considered in connection with this section [Code 1962 Section 72‑121]. Gainey v Coker’s Pedigreed Seed Co. (1955) 227 SC 200, 87 SE2d 486. McCarty v Kendall Co. (1965, DC SC) 242 F Supp 495.

The General Assembly has vested the Workers’ Compensation Commission with exclusive original jurisdiction over employees work‑related injuries. Posey v. Proper Mold & Engineering, Inc. (S.C.App. 2008) 378 S.C. 210, 661 S.E.2d 395. Workers’ Compensation 1087

Circuit court lacked subject matter jurisdiction over worker’s negligence claims against his statutory employer; instead, jurisdiction lay exclusively with the Workers’ Compensation Commission. Posey v. Proper Mold & Engineering, Inc. (S.C.App. 2008) 378 S.C. 210, 661 S.E.2d 395. Workers’ Compensation 1087; Workers’ Compensation 2215

Exclusivity provision of the Workers’ Compensation Act does not involve a court’s subject‑matter jurisdiction. Cooke v. Palmetto Health Alliance (S.C.App. 2005) 367 S.C. 167, 624 S.E.2d 439, rehearing denied. Workers’ Compensation 2084

Whether or not an employer‑employee relationship exists is a jurisdictional question in a workers’ compensation case. Fuller v. Blanchard (S.C.App. 2004) 358 S.C. 536, 595 S.E.2d 831, rehearing denied. Workers’ Compensation 233

General Assembly vested the Workers’ Compensation Commission with exclusive original jurisdiction over the types of claims made by employee, which claims included negligent supervision of an employee and negligent retention of an employee, such that the circuit court was divested of its original jurisdiction over employee’s claims. Sabb v. South Carolina State University (S.C. 2002) 350 S.C. 416, 567 S.E.2d 231. Workers’ Compensation 1087; Workers’ Compensation 2093

Exclusivity provision of Workers’ Compensation Act does not involve subject matter jurisdiction. Sabb v. South Carolina State University (S.C. 2002) 350 S.C. 416, 567 S.E.2d 231. Workers’ Compensation 2084

Whether the claim of an injured worker is within the jurisdiction of the Industrial Commission is a matter of law for decision by the court, which includes the findings of the facts which relate to jurisdiction. Bigham v. Nassau Recycle Corp. (S.C.App. 1985) 285 S.C. 200, 328 S.E.2d 663.

18. Federal courts

If the Workmen’s Compensation Act is applicable, a Federal district court has no jurisdiction of an action at law by an employee against his employer and the only proper disposition of the case is for the court to dismiss the case and leave the parties to those exclusive rights and remedies provided by the Act. Bean v. Piedmont Interstate Fair Ass’n, 1954, 124 F.Supp. 385, reversed 222 F.2d 227.

19. Pleadings

Since a defendant who wishes to raise the exclusivity of workers compensation as a defense must do so affirmatively, an employer who failed to file an answer to a negligence complaint filed by an employee was not entitled to have the action dismissed on the ground that the employee’s exclusive remedy was that provided by the worker’s compensation act. Ammons v. Hood (S.C.App. 1986) 288 S.C. 278, 341 S.E.2d 816.

20. Summary judgment

In a wrongful death and survival action that arose when decedent was killed while being driven home from work by a fellow employee, the trial court improperly granted defendants’ motion for summary judgment, ruling as a matter of law that both the deceased and the driver were acting in the course of their employment at the time of the accident and that plaintiff’s exclusive remedy was therefore under the Workman’s Compensation Act; whether the driver and deceased were in the scope and course of their employment at the time of the accident was an issue to be determined at trial. Fernander v. Thigpen (S.C. 1979) 273 S.C. 28, 253 S.E.2d 512.

21. Review

Interlocutory order that rejected hospital’s defense that was based on exclusive remedy provision of Workers’ Compensation Act was immediately appealable in helicopter pilot’s personal injury action that was brought against hospital and hospital’s employee; order involved merits of case since trial court finally determined substantial matter forming part of hospital’s defense. Cooke v. Palmetto Health Alliance (S.C.App. 2005) 367 S.C. 167, 624 S.E.2d 439, rehearing denied. Workers’ Compensation 2242

State university failed to raise the exclusivity provision of Workers’ Compensation Act as a defense to former university employee’s tort action on appeal, and thus, that challenge was waived. Sabb v. South Carolina State University (S.C. 2002) 350 S.C. 416, 567 S.E.2d 231. Workers’ Compensation 2141

**SECTION 42‑1‑550.** Rights against third persons prior to award.

When an employee, his personal representative or other person may have a right to recover damages for injury, loss of service or death from any person other than the employer, he may institute an action at law against such third person before an award is made under this title and prosecute it to its final determination.

HISTORY: 1962 Code Section 72‑122; 1952 Code Section 72‑122; 1942 Code Section 7035‑11; 1936 (39) 1231.

CROSS REFERENCES

Definition of “injury” and “personal injury”, see Section 42‑1‑160.

Library References

Workers’ Compensation 2142.50, 2158, 2171, 2253.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 1787 to 1799, 1804, 1850.

RESEARCH REFERENCES

ALR Library

13 ALR 5th 289 , Breach of Assumed Duty to Inspect Property as Ground for Liability to Third Party.

Encyclopedias

S.C. Jur. Shipping Law Section 108, Tort Action Against Third Party.

Treatises and Practice Aids

Modern Workers’ Compensation Section 103:50, Joinder and Intervention.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law, workers’ compensation law. 41 S.C. L. Rev. 237 (Autumn 1989).

NOTES OF DECISIONS

In general 1

1. In general

A workers’ compensation insurance carrier enjoys the employer’s immunity under the Workers’ Compensation Act except when the carrier stands in the position of a third party unrelated to its function as a compensation carrier. For example, carriers may perform safety inspections to assess risk and reduce on‑the‑job injuries in order to minimize benefit payments and premium increases; in such a case, safety inspections would be integral to the function of a workers’ compensation carrier. On the other hand, a carrier may contract with an employer as an independent provider of safety inspections undertaking the employer’s legal duty to provide a reasonably safe workplace; in this situation, the carrier would be performing as a third party and would not be immune from liability. Evidence of such an agreement could include specific contractual language or payment of additional fees for these services. Ancrum v. U.S. Fidelity & Guar. Co. (S.C. 1989) 301 S.C. 32, 389 S.E.2d 645.

Although Section 42‑1‑550 allows an employee to prosecute a third party action to a final conclusion before an award is made under the Workers’ Compensation Act, irrespective of whether an employee pursues a third‑party action either before or simultaneously with filing a workers’ compensation claim, the employee, to preserve his or her claim to workers’ compensation, must provide the notice required by Section 42‑1‑560(b). If the employee fails to give the notice required by that section and prosecutes the third‑party action to a final determination, either before or simultaneously with filing a workers’ compensation claim, the employee will be regarded as having elected his or her remedy and will be barred from receiving workers’ compensation benefits. Hudson v. Townsend Saw Chain Co. (S.C.App. 1988) 296 S.C. 17, 370 S.E.2d 104.

In case involving assault by fellow employee, claimant has option to claim workers’ compensation or sue employer under common law; where assault was committed by fellow employee, who was not alter ego of company, exclusive aspect of workers’ compensation law applied. Boulware v. Mills (S.C.App. 1987) 294 S.C. 24, 362 S.E.2d 184.

Neither Section 42‑1‑550, nor Section 42‑1‑560 can be read to constitute, under doctrine of election of remedies, bar to employees subsequently preceding against carrier once action at law is prosecuted to final, but unsuccessful, determination, where injured employee gave carrier proper notice of third party action, as there is no possibility of double recovery by claimant since third party action was decided against claimant, and claimant did not choose between two inconsistent remedies in electing to pursue third party claim while also pursuing workers’ compensation claim where third party claim and workers’ compensation claim are consistent and involve same basic facts. Johnson v. Pennsylvania Millers Mut. Ins. Co. (S.C.App. 1987) 292 S.C. 33, 354 S.E.2d 791.

A worker’s compensation claimant’s remedies for job‑related injuries are threefold: Proceeding solely against the employer thereby allowing the employer‑carrier the opportunity to pursue reimbursement against the third party for its obligated payments; proceeding solely against the third party tortfeasor under Section 42‑1‑550 by instituting and prosecuting an action at law; and proceeding against both the employer‑carrier and the third party tortfeasor by complying with Section 42‑1‑560. Accordingly, a claimant, who had entered into a settlement with a third party tortfeasor without the worker’s compensation carrier’s consent, thereby made an election of remedies and was barred from recovering additional benefits from the carrier under Section 42‑1‑560. Fisher v. South Carolina Dept. of Mental Retardation‑Coastal Center (S.C. 1982) 277 S.C. 573, 291 S.E.2d 200. Workers’ Compensation 2103; Workers’ Compensation 2158; Workers’ Compensation 2188

There is nothing in this section [Code 1962 Section 72‑122] evincing an intent on the part of the General Assembly to either abolish or assign to an employer a husband’s common‑law right of action against a third party for loss of consortium resulting from injuries to his wife. Crowder v. Carroll (S.C. 1968) 251 S.C. 192, 161 S.E.2d 235.

**SECTION 42‑1‑560.** Right to compensation not affected by liability of third party; rights and remedies against third party.

(a) The right to compensation and other benefits under this title shall not be affected by the fact that the injury or death is caused under circumstances creating a legal liability in some person, other than the employer or another person exempt from liability under Section 42‑1‑540 to pay damages therefor, the person so liable being hereinafter referred to as the third party. The respective rights and interests of the injured employee, or, in the case of his death, his dependents and any person entitled to sue therefor, and of the employer or person, association, corporation or carrier liable for the payment of compensation and other benefits under this title, hereinafter called the “carrier,” in respect to the cause of action and the damages recovered shall be as provided by this section.

(b) The injured employee or, in the event of his death, his dependents, shall be entitled to receive the compensation and other benefits provided by this title and to enforce by appropriate proceedings his or their rights against the third party; provided, that action against the third party must be commenced not later than one year after the carrier accepts liability for the payment of compensation or makes payment pursuant to an award under this title, except as hereinafter provided. In such case the carrier shall have a lien on the proceeds of any recovery from the third party whether by judgment, settlement or otherwise, to the extent of the total amount of compensation, including medical and other expenses, paid, or to be paid by such carrier, less the reasonable and necessary expenses, including attorney fees, incurred in effecting the recovery, and to the extent the recovery shall be deemed to be for the benefit of the carrier. Attorney fees owed and payable by the carrier to the attorneys effecting the recovery shall be set by the commission but shall not exceed one third of the total claim amount paid by the carrier to the injured employee. Such fees shall be paid from the funds recovered by the carrier. Any balance remaining after payment of necessary expenses and satisfaction of the carrier’s lien shall be applied as a credit against future compensation benefits for the same injury or death and shall be distributed as provided in subsection (g). Notice of the commencement of the action shall be given within thirty days thereafter to the Workers’ Compensation Commission, the employer and carrier upon a form prescribed by the Workers’ Compensation Commission.

(c) If, prior to the expiration of the one‑year period referred to in subsection (b), or within thirty days prior to the expiration of the time in which such action may be brought, the injured employee, or, in event of his death, the person entitled to sue therefor shall not have commenced action against or settled with the third party, the right of action of the injured employee, or, in event of his death, the person entitled to sue therefor shall pass by assignment to the carrier; provided, that the assignment shall not occur less than twenty days after the carrier has notified the injured employee or, in the event of his death, his personal representative or other person entitled to sue therefor in writing, by personal service or by registered or certified mail that failure to commence such action will operate as an assignment of the cause of action to the carrier. Prior to the expiration of ninety days after the assignment, the carrier shall give the Workers’ Compensation Commission, the injured employee, or, in event of his death, his dependents and any other person entitled to sue therefor notice, upon a form prescribed by the Workers’ Compensation Commission, that action has been or will be commenced against the third party. Failure to give this notice, or to commence the action at least thirty days prior to the expiration of the time within which such action may be brought, shall operate as a reassignment of the right of action to the injured employee, or, in event of his death, his personal representative or other person entitled to sue therefor, and the rights and obligations of the parties shall be as provided by subsection (b) of this section.

If the carrier as assignee recovers in an action:

(1) for injury, an amount in excess of the sum of the total of benefits paid or provided the injured employee and the reasonable expenses, including attorneys’ fees, incurred in making such recovery; or

(2) for death, an amount on behalf of the dependents of the employee in excess of the benefits paid the dependents, and the reasonable expenses, including attorneys’ fees, incurred in making the recovery, the excess shall be applied as a credit against future compensation and other benefits for the same injury or death and shall be distributed in accordance with subsection (g).

(d) If the persons entitled to share in the proceeds of an action brought under subsections (b) or (c) for death of the employee include any person who was not a dependent of the deceased employee, such person’s share of any recovery made in the action, less a rateable share of the reasonable expenses incurred in making the recovery, shall be paid to the person or to the personal representative of the deceased.

(e) The injured employee, or, in event of his death, his dependents, and the carrier may, by agreement approved by the Workers’ Compensation Commission, or in event of a settlement made during actual trial of the action against the third party, approved by the presiding judge at the trial, provide for distribution of the proceeds of any recovery in the action different from that prescribed by subsection (b) or (c).

(f) If the third party, with notice or knowledge of the carrier’s lien, and the employee, or, in the event of his death his personal representative or person entitled to sue therefor make a compromise settlement without the written consent of the carrier for an amount less than the total of the compensation to which he or they are entitled under this title because of such injury or death, the settlement shall be invalid as against the carrier, which shall be entitled to maintain an action against the third party to recover the amount of compensation for which the carrier is liable under this title, less the amount actually inuring to the benefit of the carrier from the proceeds of the settlement.

At the trial the fact of settlement shall be prima facie evidence that the injury was proximately caused by a breach of duty owed to the employee or a warranty given by the third party.

The carrier shall not unreasonably refuse to approve a proposed compromise settlement with the third party. The injured employee or his dependents may make written application to the Workers’ Compensation Commission for a finding that a proposed compromise settlement with the third party is reasonable and fair to all parties. If the Workers’ Compensation Commission, after such inquiry as it deems necessary, and after hearing if demanded by either the carrier, the injured employee or his dependents, finds the proposed settlement reasonable and fair, it shall be deemed to have been approved by the carrier.

Notwithstanding other provisions of this item, where an employee or his representative enters into a settlement with or obtains a judgment upon trial from a third party in an amount less than the amount of the employee’s estimated total damages, the commission may reduce the amount of the carrier’s lien on the proceeds of such settlement in the proportion that such settlement or judgment bears to the commission’s evaluation of the employee’s total cognizable damages at law. Any such reduction shall be based on a determination by the commission that such reduction would be equitable to all parties concerned and serve the interests of justice.

(g) When there remains a balance of five thousand dollars or more of the amount recovered from a third party by the beneficiary or carrier after payment of necessary expenses, and satisfaction of the carrier’s lien and payment of the share of any person not a beneficiary under this title, which is applicable as a credit against future compensation benefits for the same injury or death under either subsection (b) or subsection (c), the entire balance shall in the first instance be paid to the carrier by the third party. The present value of all amounts estimated by the Workers’ Compensation Commission to be thereafter payable as compensation, with the present value to be computed in accordance with a schedule prepared by the Workers’ Compensation Commission, shall be held by the carrier as a fund to pay future compensation as it becomes due, and to pay any sum finally remaining in excess thereof to the beneficiaries.

As soon as the Workers’ Compensation Commission has fixed the amount to be held by the carrier in this fund, or determined that no future compensation will be due, the excess of the third party recovery over the total amount necessary for payment of necessary expenses, satisfaction of the carrier’s lien, and payment of the share of any person not a beneficiary under this title and creation of such fund, if any, shall be paid forthwith to the beneficiary but shall continue to constitute a credit against future compensation benefits for the same injury or death as to any compensation liability that may exist after the fund has been exhausted.

(h) If death results from the injury and if the employee leaves no dependents entitled to benefits under this title, the carrier shall have a right of action against the third party for any amounts paid into the second‑injury fund established by Section 42‑1‑380 and for reasonable funeral expenses and medical benefits actually paid by the carrier. The cause of action shall be in addition to any cause of action of the legal representative of the deceased. This right may be enforced in any action of law brought against the third party within two years after the death of the employee.

HISTORY: 1962 Code Section 72‑126.1; 1969 (56) 622; 1974 (58) 2236; 1978 Act No. 522 Section 5.

Library References

Workers’ Compensation 2171, 2250.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 1804, 1845, 1848 to 1849.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Compromise and Settlement Section 26, Workers’ Compensation Liens.

S.C. Jur. Limitation of Actions Section 53, Workers’ Compensation.

S.C. Jur. Shipping Law Section 108, Tort Action Against Third Party.

Treatises and Practice Aids

28 Causes of Action 2d 523, Cause of Action by Injured Worker Against Third‑Party.

Modern Workers’ Compensation Section 103:1, Choice of Remedies for Injured Employee.

Modern Workers’ Compensation Section 206:7, Third Party Action Subrogation Liens‑Generally.

Modern Workers’ Compensation Section 103:47, Loss of Consortium.

Modern Workers’ Compensation Section 103:49, Time Limitations.

Modern Workers’ Compensation Section 103:50, Joinder and Intervention.

Modern Workers’ Compensation Section 103:54, Settlement.

Modern Workers’ Compensation Section 103:55, Assignment and Subrogation of Claim to Compensation Payor.

Modern Workers’ Compensation Section 103:57, Lien on Recovery.

Modern Workers’ Compensation Section 103:60, Division of Recovery Proceeds; Offsets.

Modern Workers’ Compensation Section 206:18, Statutes Governing Workers’ Compensation Liens.

Modern Workers’ Compensation Section 321:19, Third Party Claims Generally and Third Party Settlement.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Exclusive Remedy; Carrier’s Lien. 31 S.C. L. Rev. 161.

Annual Survey of South Carolina Law: Workmen’s Compensation Distribution of Third‑Party Settlement Proceeds. 32 S.C. L. Rev. 232 (August 1980).

1981 Survey: Insurance Law; Workmen’s compensation subrogation. 34 S.C. L. Rev. 36 (August 1982).

1982 Survey: Workmen’s Compensation law; Procedural requirements protect carrier’s right of subrogation. 35 S.C. L. Rev. 1 (Autumn 1983).

Products Liability ‑ An Analysis of the Law Concerning Design and Warning Defects in Workplace Products. 33 S.C. L. Rev. 273 (December 1981).

Show Me the Money! Post‑termination Payment of the Commissioned Salesperson. Sept/Oct 2002 South Carolina Lawyer, page 36.

Attorney General’s Opinions

A workmen’s compensation carrier who pays benefits to a covered employee has no statutory right of subrogation in any payments made to the employee under the employee’s uninsured motorist policy. 1976‑77 Op.Atty.Gen., No. 77‑393, p 320, 1977 WL 24729.

Attorney fees in a third party action regarding a lien for workmen’s compensation benefits paid by the carrier shall be prorated between the carrier and the claimant in cases where rights have vested as a result of settlement or judgment on or after August 1, 1974. 1974‑75 Op.Atty.Gen., No. 4107, p 184, 1975 WL 22403.

Code 1962 Section 72‑126.1(h) [Code 1976 Section 42‑1‑560(h)], as amended, provides for a “direct” cause of action by the carrier against a third party tort‑feasor which is in addition to any cause of action of the legal representatives of the deceased under the Wrongful Death Act. 1974‑75 Op.Atty.Gen., No. 4105, p 181, 1975 WL 22401.

Where workmen’s compensation carrier has a statutory carrier’s lien on an amount recovered by an employee from a third‑party tort‑feasor, attorney’s fees and expenses are to be deducted from the total amount of settlement. 1970‑71 Op.Atty.Gen., No. 3211, p 192, 1971 WL 17585.

NOTES OF DECISIONS

In general 1

Constitutional issues 3

Construction and application 2

Federal courts 8

Future expenses 6

Lien 5

Notice 4

Parties 6.5

Review 7

1. In general

An injured employee has three remedies for job‑related injuries:(1) to proceed solely against the employer thereby allowing the employer‑carrier the opportunity to pursue reimbursement against the third party for its obligated payments; (2) to proceed solely against the third party tort feasor by instituting and prosecuting an action at law; and (3) to proceed against both the employer‑carrier and the third party tort feasor. Wise v. Wise (S.C.App. 2011) 394 S.C. 591, 716 S.E.2d 117, rehearing denied. Workers’ Compensation 1110; Workers’ Compensation 2158; Workers’ Compensation 2188

In an action by an employee’s husband against a third party for loss of consortium arising out of a work‑related injury, the Workers’ Compensation Commission did not have exclusive jurisdiction to determine the husband’s share of the tort settlement obtained against the third party; such a right belongs to the husband and is separate and apart from the employee’s and the carrier’s right to claims against the third party. Doyle v. U.S. Fidelity and Guar. Co. (S.C. 1994) 316 S.C. 83, 447 S.E.2d 192.

Section 42‑1‑560(f) in no way proscribes settlement for more than claimant’s total entitlement to workers’ compensation; language refers only to settlement for less than total damages estimated to have been suffered by employee in his action against third party. Hardee v. Bruce Johnson Trucking Co. (S.C.App. 1987) 293 S.C. 349, 360 S.E.2d 522.

Where employees suffering from asbestosis had commenced products liability actions against various asbestos manufacturers, it was an abuse of discretion for the trial judge to refuse to grant the employees a stay of that action until their workers’ compensation actions were resolved. Talley v. John‑Mansville Sales Corp. (S.C. 1985) 285 S.C. 117, 328 S.E.2d 621.

Object of SC Code Section 42‑1‑560 is to effect equitable adjustment of rights of all parties. Fisher v. South Carolina Dept. of Mental Retardation‑Coastal Center (S.C. 1982) 277 S.C. 573, 291 S.E.2d 200.

Distribution of the proceeds of a State Fund subrogation claim from a third party recovery cannot be varied by the Industrial Commission or a trial judge, even when settlement with the third parties occurs during trial; any change in the distribution of such proceeds from that prescribed by statute can only be accomplished by agreement between the employee or his dependents and the insurance carrier. Vaughan v. Eddins (S.C. 1979) 272 S.C. 238, 251 S.E.2d 187.

2. Construction and application

Because workers’ compensation statutes provide an exclusive compensatory system in derogation of common‑law rights, the Supreme Court strictly construes the requirements of statute allowing claimant to simultaneously pursue a third‑party action against the tortfeasor and a workers’ compensation claim and leaves it to the legislature to amend and define its ambiguities. Callahan v. Beaufort County School Dist. (S.C. 2007) 375 S.C. 92, 651 S.E.2d 311, rehearing denied. Workers’ Compensation 1110; Workers’ Compensation 2171

Legislature intended to be consistent in envisioning settlement based upon compromise, so word “settlement” was intended to be synonymous with word “compromise”; additionally, words “total cognizable damages at law” cannot be construed in isolation, and when construed in context of entire sentence it is clear that legislature encompassed within its thinking uncertainties of trial by use of word “settlement,” but not by use of words “total cognizable damages at law,” which have clear and distinct meaning of their own, which is all those elements of damages recognized and known to law as being applicable to third‑party actions, including wrongful death actions. Garrett v. Limehouse & Sons, Inc. (S.C.App. 1987) 293 S.C. 539, 360 S.E.2d 519.

3. Constitutional issues

The gender‑based discrimination against both men and women in a provision of a state’s workers’ compensation laws denying a widower benefits on his wife’s work‑related death unless he either is mentally or physically incapacitated or proves dependence on his wife’s earnings, while granting a widow death benefits without her having to prove dependence on her husband’s earnings, cannot be justified as serving important governmental objectives and being substantially related to the achievement of such objectives merely because most women might be dependent on male wage earners making it administratively more convenient to presume dependency in the case of women than to engage in case‑to‑case determinations of dependency as for men, and thus such provision is violative of equal protection under the Fourteenth Amendment. Wengler v. Druggists Mut. Ins. Co., U.S.Mo.1980, 100 S.Ct. 1540, 446 U.S. 142, 64 L.Ed.2d 107.

4. Notice

Workers’ compensation claim could proceed even though claimant failed to comply with notice requirements of statute allowing claimant to simultaneously pursue a third‑party action against the tortfeasor and a workers’ compensation claim; civil action became a nullity, and thus statute became inapplicable, once civil action was voluntarily dismissed by claimant. Callahan v. Beaufort County School Dist. (S.C. 2007) 375 S.C. 92, 651 S.E.2d 311, rehearing denied. Workers’ Compensation 1106

Workers’ compensation claimant may proceed against both the employer‑insurance carrier in a workers’ compensation proceeding and against a third‑party tortfeasor in a civil action by complying with the requirements of statute mandating that claimant give timely notice of civil action to employer, carrier, and Workers’ Compensation Commission. Callahan v. Beaufort County School Dist. (S.C. 2007) 375 S.C. 92, 651 S.E.2d 311, rehearing denied. Workers’ Compensation 1110; Workers’ Compensation 2171

Workers’ compensation statutes governing rights against third persons and third party liability do not contain a provision establishing prejudice as a factor in considering whether a compensation claim is barred when an employee settles or concludes a third party claim without notice to employer. Kimmer v. Murata of America, Inc. (S.C.App. 2006) 372 S.C. 39, 640 S.E.2d 507, rehearing denied, certiorari denied. Workers’ Compensation 1105; Workers’ Compensation 1107

Although Section 42‑1‑550 allows an employee to prosecute a third party action to a final conclusion before an award is made under the Workers’ Compensation Act, irrespective of whether an employee pursues a third‑party action either before or simultaneously with filing a workers’ compensation claim, the employee, to preserve his or her claim to workers’ compensation, must provide the notice required by Section 42‑1‑560(b). If the employee fails to give the notice required by that section and prosecutes the third‑party action to a final determination, either before or simultaneously with filing a workers’ compensation claim, the employee will be regarded as having elected his or her remedy and will be barred from receiving workers’ compensation benefits. Hudson v. Townsend Saw Chain Co. (S.C.App. 1988) 296 S.C. 17, 370 S.E.2d 104.

Implicit in obligation of notice to carrier of third‑party action is requirement that carrier notify defendant in third party action of its lien and claim to proceeds of settlement; carrier failed to protect its rights by notifying third‑party defendant of its interest in disposition of case, and therefore could not subsequently complain that proceeds of settlement were not paid to it. Hardee v. Bruce Johnson Trucking Co. (S.C.App. 1987) 293 S.C. 349, 360 S.E.2d 522.

Neither Section 42‑1‑550, nor Section 42‑1‑560 can be read to constitute, under doctrine of election of remedies, bar to employees subsequently preceding against carrier once action at law is prosecuted to final, but unsuccessful, determination, where injured employee gave carrier proper notice of third party action, as there is no possibility of double recovery by claimant since third party action was decided against claimant, and claimant did not choose between two inconsistent remedies in electing to pursue third party claim while also pursuing workers’ compensation claim where third party claim and workers’ compensation claim are consistent and involve same basic facts. Johnson v. Pennsylvania Millers Mut. Ins. Co. (S.C.App. 1987) 292 S.C. 33, 354 S.E.2d 791.

5. Lien

The Workers’ Compensation Commission does not need to follow specific Kirkland factors in deciding whether or not it is equitable to reduce a carrier’s lien, but instead the Commission should look at the policy behind subrogation, and judge whether or not a reduction is warranted on a case‑by‑case basis. Breeden v. TCW, Inc./Tennessee Exp. (S.C. 2003) 355 S.C. 112, 584 S.E.2d 379, rehearing denied, issued 2003 WL 21733733. Workers’ Compensation 2252

The Kirkland factors are a non‑exclusive list, which can be applied to determine whether it is equitable to both parties and in the interests of justice to reduce a workers’ compensation carrier’s lien on proceeds from a settlement with a third‑party tortfeasor; once it is determined that a reduction is appropriate, no decision is needed on the amount of the reduction, rather there is a mechanical application of the statute’s formula. Breeden v. TCW, Inc./Tennessee Exp. (S.C. 2003) 355 S.C. 112, 584 S.E.2d 379, rehearing denied, issued 2003 WL 21733733. Workers’ Compensation 2252

The stronger the likelihood of third party liability, the less weight the Workers’ Compensation Commission should give to the claimant’s request for a reduction in a workers’ compensation carrier’s lien following his settlement with the third party. Breeden v. TCW, Inc./Tennessee Express (S.C.App. 2001) 345 S.C. 201, 546 S.E.2d 657, certiorari granted, affirmed in part, reversed in part 355 S.C. 112, 584 S.E.2d 379, rehearing denied, issued 2003 WL 21733733. Workers’ Compensation 2252

When deciding whether to reduce workers’ compensation carrier’s lien following claimant’s settlement with third party, Workers’ Compensation Commission should not have examined factors of carrier’s conduct in fulfilling its statutory obligations and whether carrier had an actual exposure, as they were not relevant to the determination of a lien reduction and had no bearing on the third party settlement. Breeden v. TCW, Inc./Tennessee Express (S.C.App. 2001) 345 S.C. 201, 546 S.E.2d 657, certiorari granted, affirmed in part, reversed in part 355 S.C. 112, 584 S.E.2d 379, rehearing denied, issued 2003 WL 21733733. Workers’ Compensation 2252

In action by insurer for employer for enforcement of workers’ compensation lien against third party, third party’s prior stipulation that it was responsible for satisfaction of lien by insurer for employer was binding, and, thus, third party was required to reimburse insurer for amount of lien, despite statute specifying that lien attaches to proceeds paid and is not enforceable against third party in direct action. Kirkland v. Allcraft Steel Co., Inc. (S.C. 1998) 329 S.C. 389, 496 S.E.2d 624. Stipulations 14(1)

In action by employer’s insurer for enforcement of workers’ compensation lien against third party, third party could petition to have workers’ compensation lien equitably reduced under statute allowing reduction of lien when claimant entered into settlement with third party for amount which was less than claimant’s estimated total damages, where third party’s expert witness testified that amount of claimant’s total damages was $388,717 and that he would advise client to seriously consider settling for $200,000, but claimant had settled suit for approximately $55,000. Kirkland v. Allcraft Steel Co., Inc. (S.C. 1998) 329 S.C. 389, 496 S.E.2d 624. Workers’ Compensation 2252

In considering whether or not to equitably reduce workers’ compensation lien when claimant has entered into settlement with third party for amount that is less than claimant’s estimated total damages, Workers’ Compensation Commission may consider factors such as strength of claimant’s case, likelihood of third party liability, claimant’s desire to settle, and whether carrier is unreasonably refusing to consent to settlement. Kirkland v. Allcraft Steel Co., Inc. (S.C. 1998) 329 S.C. 389, 496 S.E.2d 624. Workers’ Compensation 2252

The Industrial Commission had the authority to approve a carrier lien satisfaction agreement made between an employer and an employee where the carrier paid the employee’s workers’ compensation in full, the employee subsequently brought an action against a third party to recover for the injuries received in the industrial accident, and the agreement was made after the conclusion of the third party lawsuit. Henderson v. F & D Elec. Contractors (S.C.App. 1991) 306 S.C. 256, 411 S.E.2d 225, certiorari denied.

6. Future expenses

Workers’ compensation carrier’s lien against funds from claimant’s settlement with third party tortfeasor included only those medical expenses paid or accrued but not yet paid at time of settlement, and did not include future medical expenses. Breeden v. TCW, Inc./Tennessee Exp. (S.C. 2003) 355 S.C. 112, 584 S.E.2d 379, rehearing denied, issued 2003 WL 21733733. Workers’ Compensation 2252

Term “future compensation benefits for the same injury or death,” in subrogation statute governing the calculation of the value of a workers’ compensation carrier’s lien for the purpose of establishing a fund from excess third party settlement proceeds to pay future compensation benefits, includes future medicals in addition to economic compensation, as it would be inequitable to allow the employee to recover damages based on future medicals, and then disallow recovery for the carrier. Breeden v. TCW, Inc./Tennessee Exp. (S.C. 2003) 355 S.C. 112, 584 S.E.2d 379, rehearing denied, issued 2003 WL 21733733. Workers’ Compensation 2252

Future medical expenses are to be included in the calculation of the value of a workers’ compensation carrier’s lien for the purpose of establishing a fund from excess third party settlement proceeds to pay future medical compensation benefits. Breeden v. TCW, Inc./Tennessee Exp. (S.C. 2003) 355 S.C. 112, 584 S.E.2d 379, rehearing denied, issued 2003 WL 21733733. Workers’ Compensation 2252

Fund to pay future workers’ compensation medical compensation benefits from excess third party settlement proceeds was not subject to reduction provisions in statute allowing for reduction of carrier’s lien. Breeden v. TCW, Inc./Tennessee Exp. (S.C. 2003) 355 S.C. 112, 584 S.E.2d 379, rehearing denied, issued 2003 WL 21733733. Workers’ Compensation 2252

Following claimant’s settlement with third party, Workers’ Compensation Commission could properly apply workers’ compensation carrier’s lien reduction to future compensation. Breeden v. TCW, Inc./Tennessee Express (S.C.App. 2001) 345 S.C. 201, 546 S.E.2d 657, certiorari granted, affirmed in part, reversed in part 355 S.C. 112, 584 S.E.2d 379, rehearing denied, issued 2003 WL 21733733. Workers’ Compensation 2252

Legislature intended future medical expenses to be included in the calculation of the value of a workers’ compensation carrier’s lien for the purpose of establishing a fund from excess third party settlement proceeds to pay future medical compensation benefits. Breeden v. TCW, Inc./Tennessee Express (S.C.App. 2001) 345 S.C. 201, 546 S.E.2d 657, certiorari granted, affirmed in part, reversed in part 355 S.C. 112, 584 S.E.2d 379, rehearing denied, issued 2003 WL 21733733. Workers’ Compensation 2252

6.5. Parties

Under South Carolina law as predicted by district court, subrogated worker’s compensation carrier may not join with the injured worker as a party plaintiff in a third party action against the alleged tortfeasor in the first instance without resort to subsequent intervention. Bray v. Automatan, LLC, 2016, 167 F.Supp.3d 770. Removal Of Cases 3

7. Review

In reviewing decision of Workers’ Compensation Commission that denied application for benefits, Circuit Court could not conduct equity analysis when considering whether claimant violated statute mandating that claimant give timely notice of civil action against third‑party tortfeasor to employer, carrier, and Commission in order to be able to simultaneously proceed on both matters; statute had to be strictly construed. Callahan v. Beaufort County School Dist. (S.C. 2007) 375 S.C. 92, 651 S.E.2d 311, rehearing denied. Workers’ Compensation 1939.11(1)

Circuit judge erred in reversing Industrial Commission award of lien to employers where record contained competent testimony substantiating finding that settlement between claimant and Louisiana parties involved in motor vehicle accident was negotiated without knowledge, consent, or approval of Industrial Commission. Rogers v. Watkins Motor Lines, Inc. (S.C. 1978) 270 S.C. 238, 241 S.E.2d 744. Workers’ Compensation 2252

8. Federal courts

South Carolina state‑court action by worker and his employer’s workers’ compensation carrier, asserting products liability claims against manufacturer in connection with on‑the‑job injury worker sustained while cleaning manufacturer’s machine, did not arise under state workers’ compensation law, and thus removal to federal court was not precluded; carrier was worker’s subrogee and was statutorily entitled to reimbursement for its payment of workers’ compensation claim from recovery against manufacturer, but action did not raise substantial question of workers’ compensation law, rather, it was nothing more than diversity action for negligence, strict liability, and breach of warranty. Bray v. Automatan, LLC, 2016, 167 F.Supp.3d 770. Workers’ Compensation 2219

**SECTION 42‑1‑570.** Amount of compensation not admissible in suits against third parties.

The amount of compensation paid by the employer or the amount of compensation to which the injured employee or his dependents are entitled shall not be admissible as evidence in any action brought to recover damages.

HISTORY: 1962 Code Section 72‑127; 1952 Code Section 72‑127; 1942 Code Section 7035‑11; 1936 (39) 1231.

Library References

Evidence 219(3).

Westlaw Topic No. 157.

C.J.S. Evidence Sections 529 to 535.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 108, Tort Action Against Third Party.

NOTES OF DECISIONS

In general 1

1. In general

In Blue Ridge Rural Electric Cooperative, Inc. v Byrd (1958, CA4 SC) 264 F2d 689, it was held that in a third‑party action the district judge correctly withheld from the jury the fact that the plaintiff had received any benefits under the Workmen’s Compensation Law of South Carolina. Powers v Temple (1967) 250 SC 149, 156 SE2d 759. Blue Ridge Rural Electric Cooperative, Inc. v Byrd (1958, CA4 SC) 264 F2d 689.

In an action by an employee of a contractor against an owner the amount of compensation received from the contractor must be kept from the jury, the irrelevance or limited relevance of the compensation award to a present recovery should be explained to them, and the purpose of the evidence strictly confined in argument, as well as sharply circumscribed in the charge. Blue Ridge Rural Elec. Co‑op., Inc. v. Byrd (C.A.4 (S.C.) 1958) 264 F.2d 689.

When a plaintiff seeks recovery from a person, other than his employer, for an injury sustained on the job, upon a party’s request, or if responsive to a question from the jury, the jury shall be charged on the applicable law regarding workers’ compensation. Machin v. Carus Corporation (S.C. 2017) 419 S.C. 527, 799 S.E.2d 468. Contribution 5(5)

The primary purpose and intent of this section [Code 1962 Section 72‑127] is to prevent a third party from injecting workmen’s compensation into a case, and the amount of compensation involved, for the sole purpose of attempting to reduce the amount of any recovery. Powers v. Temple (S.C. 1967) 250 S.C. 149, 156 S.E.2d 759.

This section [Code 1962 Section 72‑127] clearly contemplates that an action against a third party must be tried on its merits as an action in tort, and any verdict of the jury adverse to the third party is to declare the full amount of damages suffered by the employee on account of his injury, notwithstanding any award or payment of compensation to him under the provision of the Workmen’s Compensation Act. Powers v. Temple (S.C. 1967) 250 S.C. 149, 156 S.E.2d 759.

**SECTION 42‑1‑580.** Effect of rights of third party against employer on employee’s recovery.

When the facts are such at the time of the injury that a third person would have the right, upon payment of any recovery against him, to enforce contribution or indemnity from the employer, any recovery by the employee against the third person shall be reduced by the amount of such contribution of indemnity and the third person’s right to enforce such contribution against the employer shall thereupon be satisfied.

HISTORY: 1962 Code Section 72‑128; 1952 Code Section 72‑128; 1942 Code Section 7035‑13; 1941 (42) 1314.

Library References

Workers’ Compensation 2243.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Section 1843.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Contribution Section 11, Defendants Immune from Direct Action.

S.C. Jur. Shipping Law Section 108, Tort Action Against Third Party.

Treatises and Practice Aids

Modern Workers’ Compensation Section 103:52, Third‑Party Defenses‑Employer Negligence.

LAW REVIEW AND JOURNAL COMMENTARIES

Contribution in South Carolina ‑ venturing into uncharted waters. 41 S.C. L. Rev. 533 (Spring 1990).

The law of indemnity in South Carolina. 41 S.C. L. Rev. 603 (Spring 1990).

Products Liability ‑ An Analysis of the Law Concerning Design and Warning Defects in Workplace Products. 33 S.C. L. Rev. 273 (December 1981).

NOTES OF DECISIONS

In general 1

1. In general

This section [Code 1962 Section 72‑128] means that where an employer has paid compensation, the third party, when sued, shall be entitled to a deduction in that amount or in the event that the employee shall have elected to go against the third party alone, that such third party may be entitled to force the employer to contribute to the extent for which he would have been liable under the Act. Burns v. Carolina Power & Light Co., 1949, 88 F.Supp. 769.

In negligence action that was brought against installer of underground water line by construction company’s employee, who was injured while preparing to tie into line, workers’ compensation statute governing effect of rights of third party against employer on employee’s recovery did not apply and thus did not entitle installer to set‑off in amount of workers’ compensation benefits that employee received from company; installer and company were not joint tortfeasors, application of statute would be unfair to company, which was not a party and thus would be absent from trial, and statute did not address how company’s negligence would be determined. Gordon v. Phillips Utilities, Inc. (S.C. 2005) 362 S.C. 403, 608 S.E.2d 425. Workers’ Compensation 2243

This section [Code 1962 Section 72‑128] relates to a right of contribution or indemnity arising out of the facts existing “at the time of the injury,” and not to some pre‑existing arrangement between an employer and a third party. Fuller v. Southern Electric Service Co. (S.C. 1942) 200 S.C. 246, 20 S.E.2d 707.

**SECTION 42‑1‑590.** Compensability of injuries to illegally employed minor.

When an employer and employee have accepted the provisions of this title, any injury to a minor while employed contrary to the laws of this State shall be compensable under this title the same, and to the same extent, as if such minor employee was an adult.

HISTORY: 1962 Code Section 72‑129; 1952 Code Section 72‑129; 1942 Code Section 7035‑11; 1936 (39) 1231.

CROSS REFERENCES

Definition of “injury” and “personal injury”, see Section 42‑1‑160.

Library References

Workers’ Compensation 362 to 373.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 258 to 262.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 106:46, Minors.

**SECTION 42‑1‑600.** Suits by public employees.

Any employee of the State or any political subdivision or of any department thereof shall be entitled to bring suit against his employer for the recovery of the benefits to which he may be entitled under the terms and provisions of this title and consent to such suit or suits is expressly given.

HISTORY: 1962 Code Section 72‑130; 1952 Code Section 72‑130; 1942 Code Section 7035‑8; 1936 (39) 1231; 1937 (40) 613.

CROSS REFERENCES

Prohibition against retaliation based upon an employee’s participation in proceedings under this title, see Section 41‑1‑80.

Library References

Workers’ Compensation 374 to 390.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 263 to 273.

**SECTION 42‑1‑610.** Agreement or regulation does not limit liability of employer.

No contract or agreement, written or implied, and no rule, regulation or other device shall in any manner operate to relieve any employer, in whole or in part, of any obligation created by this title except as otherwise expressly provided in this title.

HISTORY: 1962 Code Section 72‑131; 1952 Code Section 72‑131; 1942 Code Section 7035‑7; 1936 (39) 1231.

Library References

Workers’ Compensation 1006, 1115.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 719, 870, 874.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 204:5, Waiver of Compensation.

NOTES OF DECISIONS

In general 1

1. In general

This section [Code 1962 Section 72‑131] and Code 1962 Section 72‑132 prevent an employer from avoiding the Act other than by electing to reject it. Bean v. Piedmont Interstate Fair Ass’n, 1954, 124 F.Supp. 385, reversed 222 F.2d 227.

Whatever the parties contract to call their relationship is not controlling in a statutory employment analysis under Workers’ Compensation Code. Fortner v. Thomas M. Evans Const. and Development, LLC (S.C.App. 2013) 402 S.C. 421, 741 S.E.2d 538. Workers’ Compensation 187

Before trial court in injured trucker’s negligence action against his employer could strike employer’s sole negligence, comparative negligence, and assumption of risk defenses pursuant to statute that precluded employers who opted out of Workers’ Compensation Act from raising those defenses, court had to determine whether trucker was acting in course of his employment when injured, in light of evidence that injury occurred on delivery run in place he would never have been in had he not deviated from shortest practical route so he could stay at his home night before accident occurred. Wilson v. Builders Transport, Inc. (S.C.App. 1998) 330 S.C. 287, 498 S.E.2d 674, rehearing denied. Workers’ Compensation 2129

Section of Workers’ Compensation Act that prevents employers subject to Workers’ Compensation Act from attempting to avoid their statutory obligations does not apply to employers who opt out of Workers’ Compensation Act. Wilson v. Builders Transport, Inc. (S.C.App. 1998) 330 S.C. 287, 498 S.E.2d 674, rehearing denied. Workers’ Compensation 392

A contract of permanent employment supported only by the forbearance of an injured employee to pursue the provided remedy under the Workmen’s Compensation Law is not enforceable, since neither the employer nor employee had the right to enter into an agreement which evaded or avoided the terms and conditions of the Compensation Act. Gainey v. Coker’s Pedigreed Seed Co. (S.C. 1955) 227 S.C. 200, 87 S.E.2d 486.

Where claimant at time of his employment signed statement to the effect that he had a 40 per cent disability in one arm, such statement, when attacked by claimant, is evidence to be taken into consideration in conjunction with all the other evidence in the case, and claimant is not bound thereby as a matter of law, but the force and effect of such statement is to be determined by the fact‑finding body unless such is prohibited by this section [Code 1962 Section 72‑131]. Mason v. Woodside Mills (S.C. 1954) 225 S.C. 15, 80 S.E.2d 344. Workers’ Compensation 1531.6; Workers’ Compensation 1716

**SECTION 42‑1‑620.** Agreements of employee to waive rights invalid.

No agreement by an employee to waive his rights to compensation under this title shall be valid.

HISTORY: 1962 Code Section 72‑132; 1952 Code Section 72‑132; 1942 Code Section 7035‑24; 1936 (39) 1231.

CROSS REFERENCES

Prohibition against retaliation based upon an employee’s participation in proceedings under this title, see Section 41‑1‑80.

Library References

Workers’ Compensation 1101, 1115.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 842, 870, 874.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 204:5, Waiver of Compensation.

NOTES OF DECISIONS

In general 1

1. In general

This section [Code 1962 Section 72‑132] and Code 1962 Section 72‑131 prevent an employer from avoiding the Act other than by electing to reject it. Bean v. Piedmont Interstate Fair Ass’n, 1954, 124 F.Supp. 385, reversed 222 F.2d 227.

This section [Code 1962 Section 72‑132] relates solely to rights existing between the employer and employee and not to the effect employee’s dealings with third parties has under Code 1962 Section 72‑124. Taylor v. Mount Vernon‑Woodberry Mills (S.C. 1947) 211 S.C. 414, 45 S.E.2d 809.

**SECTION 42‑1‑630.** Situation in which provisions of title are not admissible in trial.

Upon the trial of any action in tort for injuries not coming under the provisions of this title no provisions of this title shall be placed in evidence or be permitted to be argued to the jury.

HISTORY: 1962 Code Section 72‑20; 1952 Code Section 72‑20; 1942 Code Section 7035‑16; 1936 (39) 1231; 1937 (40) 153, 613; 1939 (41) 323.

CROSS REFERENCES

Additional provision as to waiver of exemption by employers, see Section 42‑1‑380.

Library References

Workers’ Compensation 2234.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 1835 to 1837.

**SECTION 42‑1‑640.** Performance of statutory duty not excused.

Nothing in this title shall be construed to relieve any employer or employee from penalty for failure or neglect to perform any statutory duty.

HISTORY: 1962 Code Section 72‑21; 1952 Code Section 72‑21; 1942 Code Section 7035‑14; 1936 (39) 1231.

Library References

Workers’ Compensation 45.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 55 to 59.

**SECTION 42‑1‑650.** Limitation of actions after claim erroneously made.

If any claim for compensation is made upon the theory that such claim, or the injury upon which the claim is based, is within the jurisdiction of the commission under the provisions of this title and if the commission, or the Supreme Court or court of appeals on appeal, shall adjudge that the claim is not within this title, the claimant, or if he dies his personal representative, shall have one year after the rendition of a final judgment in the case within which to commence an action at law.

HISTORY: 1962 Code Section 72‑22; 1952 Code Section 72‑22; 1942 Code Section 7035‑27; 1936 (39) 1231; 1999 Act No. 55, Section 44, eff June 1, 1999.

Library References

Workers’ Compensation 2122.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 1760 to 1761.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Limitation of Actions Section 53, Workers’ Compensation.

Treatises and Practice Aids

Modern Workers’ Compensation Section 301:12, Bringing Other Proceeding.

**SECTION 42‑1‑660.** Immunity from liability on construction projects; exceptions.

No architect, engineer, land surveyor, landscape architect, or their employees or a corporation, partnership, or firm offering architectural services, engineering services, land surveyor services, or landscape architectural services who is retained to perform professional services on a construction project is liable in any action brought pursuant to Section 42‑1‑560 for any injury resulting from the employer’s failure to comply with safety standards on a construction project for which compensation is recoverable under this title, unless responsibility for safety practices is specifically assumed by contract or by direct supervision or continual direction of the injured employee relative to the segment of the job which results in the injury.

The immunity provided by this section does not apply to the negligent preparation of design plans or specifications.

HISTORY: 1996 Act No. 320, Section 1, eff May 20, 1996.

Library References

Workers’ Compensation 2158 to 2168.1.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 1798 to 1802.

**SECTION 42‑1‑700.** Specificity of description of injured or affected body parts; Employee’s Notice of Claim and Request for Hearing (Form 50).

(A) Injured or affected body parts and conditions shall be set forth with as much specificity as possible on the commission’s Employee’s Notice of Claim and/or Request for Hearing form, hereinafter referred to as Form 50. A Form 50 shall not describe the injured body part(s) or condition(s) as “whole person”, “whole body”, “all body parts”, or other similar language unless the injured employee died as a result of the accident. No hearing shall be held on a Form 50 which does not conform to the requirements of this subsection.

(B) Nothing in this section prohibits a commissioner from determining the compensability of a body part or condition not listed or described on a Form 50 if:

(1) the body part or condition is proved by a preponderance of the evidence to have arisen from the injury or injuries out of and in the course of employment as set forth on the Form 50;

(2) it is proven to the satisfaction of the commissioner that the employee had no knowledge of the injury or condition on the date of the completion of the Form 50. However, the employee is required to amend the Form 50 upon discovery of the injury or condition within a reasonable time period pursuant to regulation; or

(3) in the case of a represented employee, the body part or condition is set forth on the commission’s Prehearing Brief form, and such prehearing brief is timely filed with the commission and timely served upon the parties.

(C) A Form 50 must be signed by an attorney if the employee is represented, verifying that the contents of the form are accurate and true to the best of the attorney’s knowledge. If the employee is not represented, the employee who signs a Form 50 must verify that the contents of the form are accurate and true to the best of the employee’s knowledge.

HISTORY: 2007 Act No. 111, Pt I, Section 9, eff July 1, 2007, applicable to injuries that occur on or after that date.

Library References

Workers’ Compensation 1096.5, 1262.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 986, 988 to 990.

**SECTION 42‑1‑705.** Employer’s Answer to Request for Hearing (Form 51); specificity as to possible defenses.

(A) The commission’s Employer’s Answer to Request for Hearing form, hereinafter referred to as Form 51, must describe with as much specificity as possible the defenses to be relied upon by the defendants. A Form 51 shall not state that “all defenses apply” or other similar language, unless such is actually the case. A Form 51 which does not conform to the requirements of this subsection shall not be considered at a hearing.

(B) Nothing in this section prohibits a commissioner from considering a defense not listed on a Form 51 if:

(1) it is proven to the satisfaction of the commissioner that the defendants had no knowledge of the facts supporting the defense on the date of the completion of the Form 51; and

(2) in the case of represented defendants, the defense omitted on the Form 51 is set forth on the commission’s Prehearing Brief form, and such brief is timely filed with the commission and timely served upon the parties.

(C) A Form 51 must be signed by an attorney, verifying that the contents of the form are accurate and true to the best of the attorney’s knowledge. If the employer is unrepresented and completes a Form 51, the employer must sign the form, verifying that the contents are accurate and true to the best of the employer’s knowledge.

HISTORY: 2007 Act No. 111, Pt I, Section 10, eff July 1, 2007, applicable to injuries that occur on or after that date.

Library References

Workers’ Compensation 1096.5, 1327.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 1018 to 1019.