



THE WORKPLACE WORD

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An Employer's Liability for Leased Employee's Injuries

To meet the demands of today's complex and dynamic workplace, many employers turn to labor leasing firms to supplement their existing workforce. These labor leasing firms are convenient and cost effective because they provide immediate staffing without the employer incurring any of the costs associated with having their own regular employees. For example, labor leasing firms generally assume labor insurance, as well as administrative and overhead costs associated with the individual worker.

In light of a recent decision by the U.S. District Court for the District of Massachusetts in the case of *Scottsdale Insurance Company v. Carrabassett Trading Company*, 460 F. Supp. 2d 251 (D. Mass. 2006), employers will now have to think beyond mere convenience and cost effectiveness when using labor leasing firms. Employers must consider responsibility for leased employees' work related injuries. On the one hand, worker's compensation insurance covers employees injured on the job and the employee is generally barred from suing the employer for those injuries. On the other hand, third parties injured on the employer's job site are generally covered by the employer's comprehensive general liability ("CGL") insurance policy. Leased employees injured on the job, however, may not be covered under worker's compensation insurance because they do not fit the definition of "employee." Similarly, an employer's CGL policy may not cover liability stemming from work-related injuries sustained by a leased employee. Without any coverage the employer is left liable for the leased employee's work-related injuries.

Carrabassett Trading Company ("Carrabassett") found itself in this exact position after Raul Torres, a leased employee placed by Venturi Staffing Agency, lost his left arm while operating a wool picking



machine. His injuries were not covered under the state's worker's compensation statute because Mr. Torres did not meet the definition of an "employee." Because the worker's compensation statute did not apply to Mr. Torres, he sued Carrabassett for negligence. The issue before the Court was whether Carrabassett's CGL policy covered Mr. Torres' negligence claim. The CGL policy included a bodily injury provision that was subject to an "Employer's Liability" exclusion. Among other things, the exclusion stated that the insurance policy did not cover bodily injuries sustained by an "employee" arising out of the course of his or her employment. Carrabassett and Scottsdale Insurance Company ("Scottsdale Insurance") disputed whether Mr. Torres fell within this exclusion, because the exclusion applied to "leased" workers but did not apply to "temporary" workers. Carrabassett argued that Mr. Torres was a "temporary" worker because he was intended to fulfill "seasonal" or "short term" requirements. Scottsdale Insurance argued that Mr. Torres was a "leased" worker because he had worked with Carrabassett for

47 weeks and that his continued employment at the time of the accident was indefinite. The Court found that Scottsdale Insurance was not required to cover Mr. Torres' negligence claims because Mr. Torres was a "leased employee" excluded by the CGL policy.

With this outcome, the Court clearly sent a message that employers will not be able to both reap the benefits of using leased employees for indefinite periods of time and claim that such leased employees are covered under the CGL policy. Employers need to be aware of the risks associated with using workers from staffing agencies, including the possibility of lawsuits and bearing the full responsibility for judgments a leased employee may obtain. Employers who use leased employees should make sure their current CGL policy covers such workers, obtain a CGL policy that covers such workers, or obtain an endorsement that covers such workers. Taking these precautions may prevent an employer from incurring substantial liability that was never contemplated.

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