
WORKER'S COMPENSATION JURISDICTIONAL CONTRACTS

Multi-state business operations are commonplace today. To manage liability exposure, employers often require contracts defining jurisdiction for workplace injury claims. Jurisdictional contracts create several issues. This article briefly addresses how state jurisdictions view such contracts.

A common reference for legal practitioners is *Larson's Workman's Compensation*, a treatise originally authored by the late Professor Arthur Larson and updated by subsequent authors. As noted in *Larson's*, these issues are:

by no means unusual, what with truck, bus and airlines, construction companies, and many other industries on a nationwide or even worldwide basis, drawing their employees from many states, contracting with them at the home office or at branch headquarters and sending them to work in different states and countries, often after trying to contrive a private contract which ensures the application of a single-named compensation act.

In *Larson's* it is further noted that a state may exercise jurisdiction upon consideration of:

- the place where the injury occurred;
- the place where the employment contract was made;
- the place where the employment relation existed;
- the place where the employer is located;
- the place where the employee resides; and,
- the state whose compensation the parties adopted by contract.

A state qualifying under any of the first three grounds and probably either of the next three can constitutionally apply its statute. Accordingly, a state where a contract for employment was made has sufficient interest to apply its statute, unless the employment relation has been transferred to another state. However, a contract between the employer and the employee agreeing to be bound by the act of a particular state does not limit application of another state's act if that state could constitutionally apply its act.

The United States Supreme Court has determined that states can have concurrent and successive jurisdiction over worker's compensation claims. This means that an employee can bring the same worker's compensation claim in two or more

states or other jurisdictions, and can be awarded compensation in two or more of the states. See, for example, *Carroll v. Lanza*, 349 U.S. 408 (1955); *Pacific Employers Ins. Co. v. Industrial Accident Commission of California*, 306 U.S. 493 (1939). In those decisions, it generally appears that, in the event of multiple awards, the employer is allowed a credit for the amounts paid in one jurisdiction against the award in another.

To illustrate, we'll use an example in which the employee/claimant is a resident of Florida and was hired by an Indiana trucking company. The contract for hire is in Indiana. The contract provides that both parties agree to Indiana law/jurisdiction in the event of an accident. The contract allows for driving to conceivably be performed in every state. The employee/claimant's accident occurs in Illinois.

The key question is whether the contractual choice of law provision in the employment contract bars actions in other states. A potential stumbling block is that most states' workers' compensation laws have an "anti-device provision," such as Indiana Code §22-3-2-15. These provisions say that "no contract, agreement, rule or other device" can operate to relieve an employer of its obligations under the state's worker's compensation act.

Indiana Jurisdiction

Indiana jurisdiction may be applied where there is an implied or express contract for employment and some performance of that contract in Indiana, *Mid-Continent Petroleum Corp. v. Vicars*, 47 N.E.2d 972 (Ind. 1943). According to *Larson's*, Indiana has the broadest coverage of any worker's compensation act. Indiana Code §22-3-2-20 extends coverage of Indiana's Act regardless whether the "injury occurs within the state or in some other state or in a foreign country."

Indiana jurisdiction may be invoked in cases where there is an Indiana employer and contemplated partial performance of the employment contract in the State of Indiana. Both elements appear in the example claim. Indiana courts have recognized jurisdictional contracts binding the parties to Indiana worker's Compensation law. See *Lender Specialty Company v. Chapman*, 152 N.E. 872 (Ind. Ct. App. 1926); *Calkins v. Service Spring Company*, 7 N.E.2d 54 (Ind. Ct. App. 1937) and *Elkhart Saw Mill Company v. Skinner*, 42 N.E.2d 412 (Ind. Ct. App. 1942).

It seems that Indiana jurisdiction applies to the example. However, allowance for concurrent jurisdiction does not bar jurisdiction by another state.

Illinois Jurisdiction

Illinois jurisdiction may be asserted (1) if the contract for hire was made in Illinois, (2) if the accident occurred in Illinois, or (3) if the claimant's employment was principally located in Illinois. See 820 ILCS 305/1(b)(2).

The majority of Illinois cases addressing this issue focus on the contract of hire. If even a portion of the contract was entered into in Illinois, jurisdiction over the matter can be asserted.

In *P.I. & I. Motor Express v. Industrial Commission*, 857 N.E.2d 784 (5th Dist. 2006), the employee was a truck driver and an Illinois resident. He was injured while driving in Pennsylvania. When he accepted employment, he contractually agreed to be bound by the workers' compensation laws of the State of Ohio and that the Ohio statute would be the exclusive remedy for any injuries arising out of his employment. In this decision, the Court noted that competent parties are free to contract with one another; however, an agreement will not be enforced if it is contrary to the public policy of the state.

The Court held that held that the agreement was against public policy and kept the case in Illinois. It seems that part of the decision was based upon the fact that the employment contract was entered into in Illinois, thereby giving Illinois a legitimate concern over the employer/employee relationship sufficient to assert jurisdiction even though the claimant's injury occurred elsewhere.

The Illinois Workers' Compensation Act also contains an "anti-device" provision stating that no employee, personal representative or beneficiary shall have power to waive any of the provisions of the Act without the approval of the Commission.

In the example, the employee/claimant's only relation to Illinois is that the accident happened there. Otherwise, he is a Florida resident, his contract for hire was made in Indiana, and he agreed to be bound by Indiana worker's compensation law. The employer could argue that the *P.I. & I. Motor Express* case is factually dissimilar and that Illinois does not have any legitimate concerns over the employer-employee relationship because all actions defining the relationship occurred before the accident.

Jurisdictional contracts ultimately require diligent defense in order to avoid the claims administration problems that arise from concurrent jurisdiction.