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General Contractors and Statutory Employer Immunity Under Six L's Packing

In May 2012 the Pennsylvania Supreme Court issued a decision in Six L's Packing Company v. Workers' Compensation Appeal Board, 44 A.3d 1148, 2013 Pa. LEXIS 1238 (Pa. May 29, 2012) significantly expanding the applicability of the statutory employer defense in third party liability claims filed against general contractors by a subcontractor's employee.

By way of background, the "intent behind the doctrine of statutory employer is to hold a general contractor secondarily liable for injuries to the employees of a subcontractor, where the subcontractor primarily liable has failed to secure benefits with insurance or self insurance." Dougherty v. Conduit & Foundation Corp., 674 A.2d 262, 265 (Pa. Super. 1996); *see* O'Donnell v. R. M. Shoemaker & Co., 816 A.2d 1159, 1163 (Pa. Super. 2003). "An entity's status as a "statutory employer" results in liability for Workers' Compensation insurance and, coextensively, provides immunity to the statutory employer from common law tort liability." Vandervort v. WCAB (City of Philadelphia), 899 A.2d 414, 418 (Pa. Commw. 2006). "Because the workers' compensation system is the exclusive remedy for an injured employee seeking redress for a work-related injury from his or her employer, 77 P.S. 481(a), Section 203 confers upon the statutory employer the same immunity from tort liability that a "contractual" or "common law" employer would have." *Id.*, *citing* Peck, 814 A.2d 185, 188 (Pa. 2002).

The statutory employer immunity from third party civil liability has generally been limited to construction workplace accidents. The immunity is often used by general contractors sued in tort by a subcontractor's employee injured on the jobsite.

In determining whether a contractor fits the definition of "statutory employer," Pennsylvania courts have applied what is commonly referred to as the McDonald test, a test set forth in the seminal case of McDonald v. Levinson Steel Co., 153 A. 424 (Pa. 1930). Under that test, the party asserting the statutory employer immunity must establish the following criteria:

- (1) An employer who is under contract with an owner or one in the position of an owner;
- (2) Premises occupied by or under the control of such employer;
- (3) A subcontract made by such employer;
- (4) Part of the employer's regular business entrusted to such subcontractor;
- (5) An employee of such subcontractor.

McDonald, 153 A. at 426.

Arguably, the standard articulated in the Six L's Packing Company case supersedes the McDonald test insofar as a contractor is no longer required to establish the "occupancy and control" criteria under section 302(a) when asserting statutory employer immunity.

In Six L's Packing Company the Pennsylvania Supreme Court held that the "on-premises" conditions and requirements referenced under Section 302(b) of the Workers' Compensation Act

and in the McDonald case are not necessary for an entity to be a statutory employer under Section 302(a) of the Act. 77 P.S. §461. Section 302(a) of the Workers' Compensation Act provides as follows:

A contractor who subcontracts all or any part of a contract and his insurer shall be liable for the payment of compensation to the employees of the subcontractor unless the subcontractor primarily liable for the payment of such compensation has secured its payment as provided in this Act.

77 P.S. §461.

Unlike Sections 203 and 302(b) of the Act, there is no requirement limiting the concept of the statutory employer to on-premises injuries. In order to qualify as a statutory employer under the Six L's Packing Company standard, the following elements must be demonstrated:

(1) A contractor who subcontracts all or any part of the contract; (2) An employee of the subcontractor; and (3) The contract must apply to work performed of the kind which is a regular or recurrent part of the business, occupation, profession or trade of the contractor.

Accordingly, the criteria articulated by the Pennsylvania Supreme Court in Six L's Packing Company v. Workers' Compensation Appeal Board simplifies what a general contractor must prove for statutory employer immunity in civil actions filed by a subcontractor's employee.

What It Means to You

The holding in Six L's Packing dramatically alters the landscape of the statutory employer defense. Under the McDonald test, the statutory employer defense is fact sensitive and requires that the general contractor establish that it "occupied or controlled" the jobsite at the time of the alleged accident. By eliminating the "on-site premises" condition, the Six L's Packing standard not only broadens the applicability of the statutory employer immunity for general contractors, but also provides clearer and more concise criteria by which the court can evaluate a general contractor's immunity from civil liability upon the filing of a dispositive motion.