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It is common knowledge, especially in these dismal economic times, that businesses often hire temporary workers, or "temps," to cut down on labor costs. By contracting with a temp agency to provide workers, a business can avoid the expenses of hiring a new employee - such as payroll taxes and fringe benefits like health insurance. In their contracts with temp agencies, these businesses often include a term declaring that the temporary workers are not employees of the business.

When temps suffer workplace injuries, however, these businesses unfairly try to have their cake and eat it too. They avoid all of the liabilities of treating temps like employees, but still enjoy all of the protections.

By including a contractual term that the temporary workers are not employees, these businesses avoid liability for worker's compensation claims when temps are injured on the job. As an added protection, these contracts contain a term declaring that the temp agency is solely responsible for the workers' compensation claim if a temp is injured while working for the business. Thus, businesses that use temps avoid all liability for workers' compensation claims.

But if an injured temporary worker is not an employee, the temp should be able to sue the business if its negligence caused the injury. These lawsuits are rarely successful, however, because the businesses are almost always granted the protections of treating temps as employees.

When defending these lawsuits, businesses rely on two legal principles - the "exclusive remedy" doctrine and the "special employment" doctrine. Under the exclusive remedy doctrine, an employee injured on the job cannot sue his employer for negligence; the employee's "exclusive remedy" for his injuries is workers' compensation. Under the special employment doctrine, an employer can loan out his employee to work for a "special employer." Assuming three requirements are met, the loaned worker is considered the employee of the special employer.

The application of these two doctrines to temporary employees is obvious. When a temp is injured on the job and sues the business for negligence, the business tries to defeat the lawsuit by claiming to be his special employer. And if the business can convince the court that it is the temp's special employer, then lawsuit is barred by the exclusive remedy doctrine. This strategy has worked over and over again with North Carolina courts.

Thanks to a case the Court of Appeals issued last week, however, this unjust arrangement may be at an end. In *Gregory v. Pearson,* a temp working for Cleveland County filed a lawsuit against the County after suffering a workplace injury. Predictably, the County argued that the lawsuit was barred by the special employment and exclusive remedy doctrines. The trial court found that the County was the temp's special employer, and so dismissed the case. The Court of Appeals reversed the decision.

The Court held that the County failed to satisfy the first requirement of the special employment doctrine, *i.e.,* that the employee had entered a contract of employment with the County. In reaching this decision, the Court closely examined the county's contract with the temp agency. The contract expressly stated that temporary workers were not employees of the County. Due to this contractual term, the Court refused to find that the temp had entered a contract of employment with the county. The temp was, therefore, not a special employee, and her case was not barred by the exclusive remedy doctrine.

As the Court explained, the County "chose not to establish an employment relationship" with the temporary worker. In doing so, the County gave up "both the liabilities and protections" of workers' compensation. The Court reasoned, "Having made a contract which allocated the risk of workers' compensation liability to [the temp agency], the County may not now use the Workers' Compensation Act as a shield against the risk of 'large damage verdicts' for tort liability."

In our view, *Gregory* simply allows temp workers to be treated fairly under the law. Businesses that use temps cannot avoid liability for both workers' compensation claims and civil lawsuits. If in their contracts with temp agencies, businesses deem temp workers not to be their employees, then those businesses leave themselves open to negligence claims when temps are injured on the job.

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