

When an employee is hurt while providing a service to more than one employer, a common question is which employer should be responsible for paying workers' compensation benefits to the injured employee. This issue usually arises when the injured employee is working through a staffing agency or temporary employment agency, or when there are multiple employers on a job site.

The North Carolina Court of Appeals recently provided some clarification on the issue of "joint employment" and "lent employment." In *Whicker v. Compass Group*, the court explained that joint employment occurs where an employee is (1) under contract with two employers, (2) under their simultaneous control, and (3) where the service being provided is for the benefit of both employers. In that case, both employers are responsible for paying workers' compensation benefits to the injured worker. The lent employment doctrine applies where one employer lends its employee to another employer, called the "special employer." In that situation, the special employer will be liable for paying workers' compensation benefits if: (1) the claimant has entered into a contract with the special employer, (2) the work being performed is "of the same nature" as the work performed by the special employer, and (3) the special employer maintains the right to control the manner and details of the work being performed. If all three elements are met, both employers may be liable for workers' compensation benefits.

Both of these tests for determining who is responsible for paying benefits requires a contract of employment between the employee and the second employer. That contract may be implied, so a written contract is not necessarily required. Often, our courts look to the contract between the direct employer and the second employer to determine whether an implied contract exists. In *Whicker*, the contract between the direct employer and the second employer stated that personnel, including the injured employee, would be employees of the direct employer. Based in large part on that contract, the court held that there was no implied contract between the claimant and the alleged second employer. Accordingly, the direct employer was responsible.

These legal doctrines are important to employees who believe their injuries were caused by the negligence of a second employer, or one of the second employer's employees. If the court finds that both employers are responsible for workers' compensation under one of these tests, then the employee is probably barred from bringing a personal injury lawsuit against the second employer. Generally, if an employer is liable for workers' compensation benefits,

workers' compensation is the injured worker's only remedy against that employer.

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