

# Louisiana Workers' Comp Review

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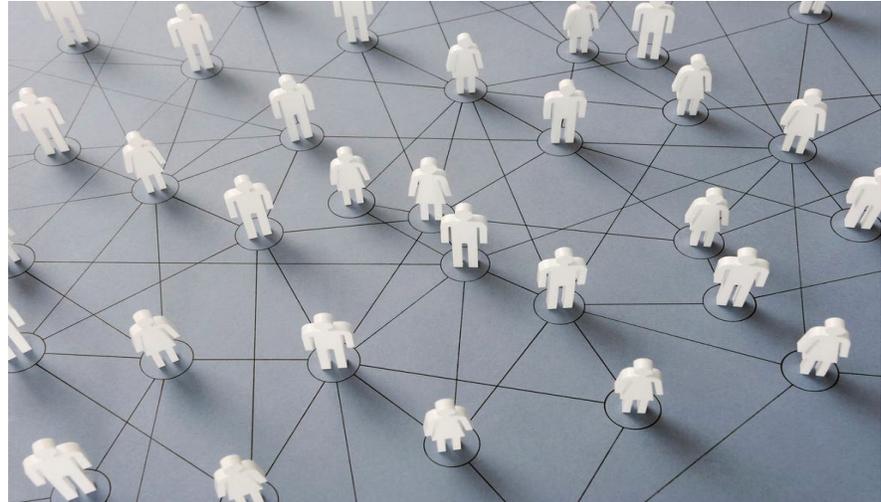
A routine movement can be considered an "accident"

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The Basics Explained.

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Louisiana Considering Employment Laws pertaining to the use of medical marijuana



**Quick Bites**

Max Comp Rate: \$771.00

Min Comp Rate: \$206.00

Mileage: \$0.62 / mile

Links:

[LA Workforce Commission](#)

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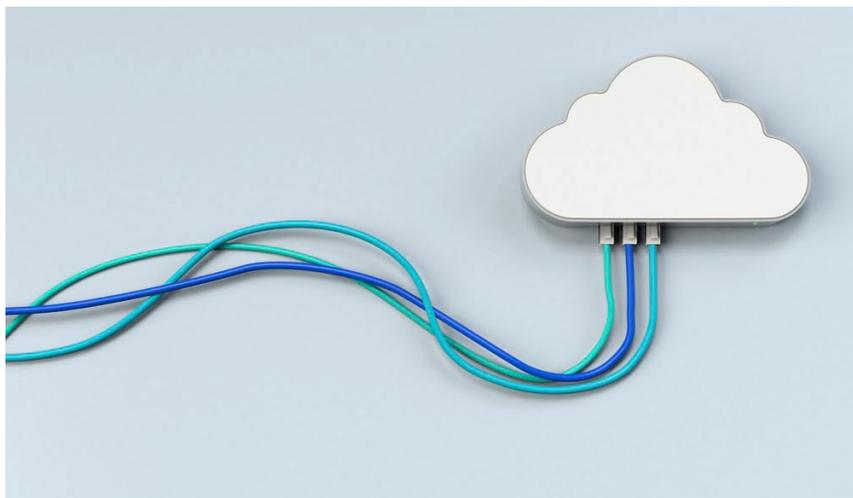
## Recent Caselaw

**Michael Boudreaux v. Take 5, LLC (Louisiana Third Circuit)**

Opinion - The claimant, Michael Boudreaux, was employed by Take 5, LLC (Take 5) as an assistant manager. According to Mr. Boudreaux, he had a particularly busy day on July 8, 2020, where he loosened several overtight oil filters using a "breaker bar", worked extensively in cramped spaces, and had little breaktime. After closing the shop around 6:00 pm, he visited with some friends. As he was getting ready to leave his friend's, he felt a discomfort in his lower back. He testified at trial that he did not experience any pain or discomfort while at work on July 8, 2020. The trial court found that Mr. Boudreaux proved the occurrence of an accident, that he was entitled to the presumption of causation, and that he was owed workers' compensation benefits.

On appeal, the Defendants asserted that the trial court erred in finding that Mr. Boudreaux had proven the occurrence of an accident, i.e. a sudden, precipitous event, among other assignments of error. The appellate court confirmed that the trial court had found that the use of the "breaker bar" to loosen tight filters constituted a precipitous event and the appellate court refused to disrupt this finding on appeal. Additionally, the claimant was able to avail himself of the presumption of causation, because he had no prior complaints of similar pain and medical records substantiated that he was injured at work on July 8, 2020. The appellate court affirmed the judgment on appeal.

To summarize the findings, a workers' compensation court may find that an "accident" as that term is defined under the Louisiana Workers' Compensation laws, may also include a routine movement or task that the employee regularly performs, if the claimant is able to identify, with some particularity as to time, place and manner, the objective manifestation of the accidental injury."



## Client Successes

*Settlement* - The Claimant was discharged from the care of his physician and released to return to work. He filed a 1008 alleging entitlement to continued wage benefits and additional medical treatment. Additional benefits were denied and the claim was settled for a nominal amount.

## Workers' Comp Fraud

### The basics explained.

La. R.S. 23:1208 is the workers' comp "fraud" statute. Generally, this statute makes it unlawful for any person "for the purpose of obtaining or defeating any benefit or payment under the provisions of this Chapter, either for himself or for any other person, to willfully make a false statement or representation." Any employee violating this section forfeits his or her right to receipt of workers' compensation benefits. Because forfeiture is a harsh remedy, the statute is strictly construed. The statute was enacted to prevent and discourage fraud in relation to workers' compensation claims.

Forfeiture is authorized by statute upon proof of: (1) a false statement or representation, (2) that is willfully made, (3) for the purpose of obtaining benefits. There must be a relationship between the false statement and the claim. Inadvertent and inconsequential false statements will not result in forfeiture.

Some examples of fraud included: (1) misrepresenting pre-accident earnings to receive more in indemnity benefits<sup>i</sup>; (2) claimant testified under oath that medical conditions developed as a result of the accident and denied any previous similar conditions, which were contradicted by medical records<sup>ii</sup>; (3) denial of a prior shoulder pain, despite medical records indicating a history of right shoulder complaints for over 10 years prior to the alleged work accident<sup>iii</sup>; (4) denial of prior neck and back pain, despite undergoing a cervical fusion surgery for a prior injury<sup>iv</sup>.

Proving workers' comp fraud is fact intensive. Even ostensibly strong cases of potential fraud may not result in forfeiture unless there is overwhelming evidence of fraud which directly relates to the Claimant's alleged injuries. Should you have any cases where fraud is suspected, we would welcome the opportunity to evaluate the claims and provide a legal opinion regarding the case.

*Settlement* - The claimant sustained burn injuries and a wrist injury. Pursuant to the FCE, he could not return to his job of injury, but he could return to work in a light/medium duty capacity. The claim was settled on favorable terms based on the claimant's anticipated residual wage-earning capacity.

## News

A Louisiana Legislative task force is exploring recommendations to resolve employment issues surrounding the use of medical marijuana. One of the biggest concerns is impairment, as the task force is looking for ways to limit impact to employees whose legitimate use of medical marijuana for pain control does not cause impairment. Proposals are set to be provided to the Legislature before February 1, 2023 and the next legislative session starts April 10, 2023. We will monitor this.

## About the Author

### Lee M. LeBouef



Lee M. LeBouef is an Associate Attorney at Leake & Andersson, LLP in New Orleans, Louisiana. Lee graduated from the Paul M. Hebert Law Center - Louisiana State University in 2015. He began his law practice handling mostly small construction disputes for contractors, subcontractors, and homeowners. Since 2017, he has practiced primarily in Louisiana Workers' Compensation defense, handling simple and complex cases for employers, insurers, and third-party administrators, including subrogation. Lee has recently attended the Workers' Compensation Institute Conference in Orlando and the National Workers' Compensation and Disability Conference in Las Vegas.

If you have any questions about Louisiana Workers' Compensation, please contact Lee at your convenience.

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i *Baker v. Stanley Evans Logging*, 42,156 (La. App. 2 Cir. 6/20/07), 960 So. 2d 351, writ denied, 2007-1817 (La. 12/14/07), 970 So. 2d 533

ii *Rodriguez v. Nola Motor Club, L.L.C.*, 19-447 (La. App. 5 Cir. 10/5/20), 304 So. 3d 147, 149, writ denied, 2020-01432 (La. 2/17/21), 310 So. 3d 1154

iii *White v. WIS Int'l*, 2019-747 (La. App. 3 Cir. 5/20/20), 298 So. 3d 237, 251, writ denied, 2020-00770 (La. 10/6/20), 302 So. 3d 533

iv *Reeder v. Hardtner Med. Ctr.*, 2017-1028 (La. App. 3 Cir. 5/2/18), 244 So. 3d 1244, writ denied, 2018-0917 (La. 9/28/18), 253 So. 3d 153