LEAKE & ANDERSSON L.L.P.

Louisiana Workers' Comp Review

September 2023
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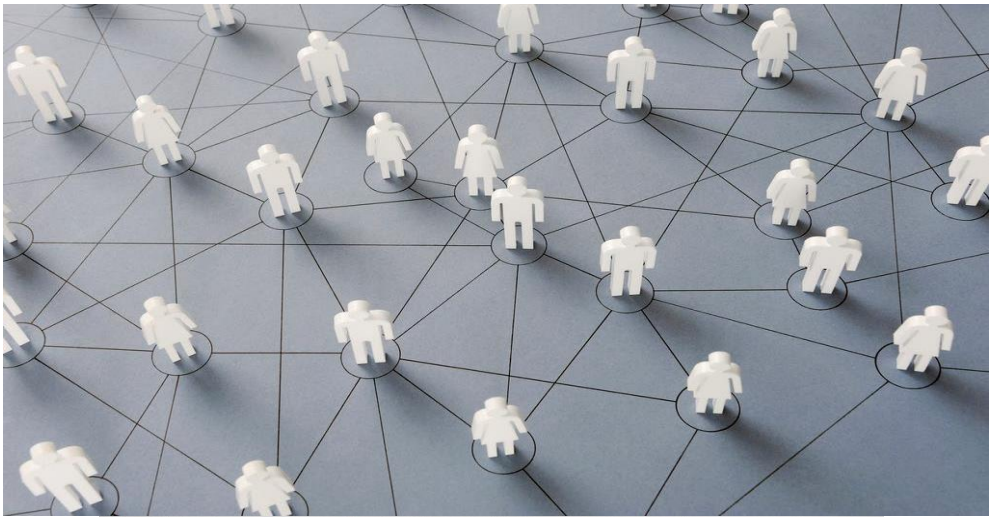
INSIDE



Recent Caselaw – *Average Weekly Wage*

***Ceaser v. Lake Charles Care Center* (22-572, LA Third Circuit)**

Opinion – The Claimant was involved in a motor vehicle accident while in the course and scope of her employment with LCCC. The Claimant was a full-time employee of LCCC and she also had a part-time job with another employer. LCCC denied benefits were owed, alleging that the Claimant's complaints were related to a prior WC injury and that the Claimant committed fraud under La. R.S. 23:1208.1. At trial, the fraud allegations were rejected by the Court and the Claimant was awarded all indemnity and medical benefits arising out of and related to the accident. Her AWW was calculated using her full-time wages at LCCC (40 hours) and part-time wages at another employer (32 hours).

On appeal, the employer argued, among other things, that the WC Judge committed a legal error when calculating the Claimant's AWW. For an unknown reason, the Employer *did not* appeal the rejection of the 1208.1 Fraud defense…

The Appellate Court determined that the WC Judge improperly applied La. R.S. 23:1031(13)(iv)(bb), by wrongly cumulating the Claimant's part-time wages on top of her full-time wages. Based on that statute and *Guillory v. Interstate Hotels & Resorts,* 05-650 (La. App. 3 Cir. 12/30/05), 918 So.2d 550, the maximum number of hours that can be accumulated in the calculation of a part-time employee's average weekly wage is 40. Because the Claimant's AWW based on her full-time employment with LCCC utilized 40 hours, the part-time employment with her other employer could not be included. The Appellate Court amended the judgment to reflect this ruling.

Practical Tips: With the proliferation of the "gig" economy, more and more employees are working one, two, or more jobs, likely in excess of 40 hours per week. If a part-time employee is injured while working one of his or her part time jobs, the cumulation of part-time hourly wages utilized in the AWW calculation for that employee should not exceed 40 hours. Any calculation that includes hours in excess of 40 would be improper based on this case.

Quick Bites

Max Comp Rate: $816.00
(effective 9/1/23)

Min Comp Rate: $218.00
(effective 9/1/23)

Mileage: $0.655 / mile

Links:

LA Workforce Commission

1002 Form

1007 First Report Form

1008 Disputed Claim

1011 Settlement

1015 IME

Questions?

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US Gig Economy

Employee v. Independent Contractor

With more and more young (and older) people dodging traditional 9 to 5 jobs, the US "gig" economy has proliferated. According to Investopedia, the "gig" economy relies heavily on part-time or temporary positions that are occupied by independent contractors or freelancers rather than full time employees. As of the end of 2021 (the latest year that data is available), approximately 16.4% of the American Workforce is made up of "gig" workers, which equals approximately 25-30 million workers. This number is expected to grow exponentially over the next half decade.

Interestingly, the La. Workers' Comp Act does not provide a specific definition of employee. In terms of who is entitled to workers' comp benefits, the Act provides that an employee…who is injured "by accident arising out of and in the course of his employment…" shall be entitled to such benefits. La. R.S. 23:1021 provides the definition of "Independent contractor," which means any person who renders service, other than manual labor, for a specified recompense for a specified result either as a unit or as a whole, under the control of his principal as to results of his work only, and not as to the means by which such result is accomplished…" Independent contractors are generally excluded from the provisions of the Workers' Comp Act.

In Louisiana, there is a presumption that the worker is an employee, but there is a statutory exception for independent contractors, defined above. When it is asserted that the presumption should be overcome, the determination of employee versus independent contractor is taken on a case-by-case basis and relies on a factual analysis of the total economic relationship between the parties.

The Louisiana Supreme Court has found the following factors relevant in determining whether the relationship of principal and independent contractor existed: (1) there is a valid contract between the parties; (2) the work being done is of an independent nature such that the contractor may employ non-exclusive means in accomplishing it; (3) the contract calls for specific piecework as a unit to be done according to the independent contractor's own methods, without being subject to the control and direction of the principal, except as to the result of the services to be *(cont'd)*

Client Successes

Settlement – A large dog forced the claimant to jump over the railing of a porch while delivering a package to a customer. The Claimant suffered a left knee injury, including ACL and meniscal tears, which was treated initially with conservative care and eventually with arthroscopic surgery. After approximately 20 months of treatment (with some fairly large gaps) the claimant was released to return to work with no restrictions and indemnity benefits were stopped. Several months later, the claim was settled on a full and final basis under extremely favorable terms.

Gig Economy, Cont'd

rendered; (4) there is a specific price for the overall undertaking agreed upon; and (5) the duration of the work is for a specific time and not subject to termination or discontinuance at the will of either side without a corresponding liability for its breach. *Hickman v. Southern Pacific Transport Company, 262 La. 102, 262 So.2d 385 (1972).*

The most important factor is the right of control, and not specifically that the right was actually exercised, but that the right existed.

If you are unsure if an injured worker is an employee versus an independent contractor, contact the attorneys at Leake & Andersson for a legal opinion.

About the Author

Lee M. LeBouef

Lee M. LeBouef is Partner 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 was recently promoted to Partner at the beginning of 2023. Lee is a member of the Louisiana Bar Association's Insurance, Tort, Workers' Compensation and Admiralty Section. He is also a member of ALFA International's Workers' Compensation Practice Group and is active on the Steering Committee. Last year, Lee 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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