Illinois Supreme Court Clarifies "Traveling Employee" Exception

Labor & Employment Law Update

on January 3, 2014

On December 19, 2013, the Illinois Supreme Court issued its much anticipated decision in *Venture-Newberg-Perini, Stone & Webster v. Ill. Workers' Compensation Comm'n.*, No. 115728 (Ill. 2013). Claimant Ronald Daugherty accepted temporary employment 200 miles from his home at Respondent Venture's Cordova plant. Daugherty and coworker Todd McGill chose to stay in a hotel 30 miles from the plant rather than make the 400 mile/day roundtrip commute after their 12-hour shifts. On what was to be their second day of work, McGill, driving his own truck, skidded on ice while crossing an overpass, resulting in serious injuries to Daugherty. Daugherty sought workers' compensation benefits.

An arbitrator (*i.e.*, administrative law judge) found the accident did not arise out of and in the course of employment, and denied all benefits. A divided Workers' Compensation Commission panel acknowledged that, in general, an employee injured on the way to or from work was not entitled to benefits, but nonetheless reversed the arbitrator's decision. The Commission found two exceptions applied: (i) the accident arose out of the Daugherty's employment since the method of travel was determined by the demands and exigencies of the job rather than the Daugherty's personal preference, and (ii) Daugherty was a traveling employee whose injury was considered to arise out of and in the course of employment. The circuit court set aside the Commission's award. The appellate court reversed, and reinstated the Commission's award.

In the wake of a series of appellate court decisions that have unreasonably expanded Illinois Workers' Compensation liability and employer exposure, Michael Resis, chair of Amundsen Davis's Appellate Practice Group, was specifically hired and retained to brief and present oral argument to the Illinois Supreme Court. The Supreme Court reversed the appellate court's decision, and reinstated the arbitrator's award. The Supreme Court held that Daugherty's injuries did not arise out of and in the course of employment, nor was he a traveling employee, and therefore no benefits were due. Daugherty was no different than any other employee who had to drive to work on a daily basis. The Supreme Court found significant that:

1. Daugherty was not required to accept the temporary employment, and would have been prohibited from doing so under his union's rules had there

been work available within the local's territory;

2. Daugherty had previously worked for Venture four times;
3. Daugherty was not reimbursed for his travel or lodging expenses, nor was he paid for his time commuting;
4. Daugherty made the personal decision that the costs of travel and lodging were outweighed by the potential wages;
5. Venture did not require Daugherty and McGill to car pool, but rather they made the decision to save money;
6. Venture did not make the travel or lodging arrangements; and
7. Venture did not require Daugherty to relocate or commute in any particular fashion to get to work.

This decision is useful to employers, even on its limited facts as it puts limits on workers' compensation liability where employees temporarily relocate away from the home communities. The "traveling employee" doctrine excludes someone hired for only one location that is remote from his or her home. However, while this decision provides some relief to employers under the traveling worker exception to the requirement that an injury "arise out of and in the course of employment" for workers' compensation purposes, much ambiguity remains. For example, while the Court found the facts above persuasive, it is unclear whether the decision would have gone the other way had Venture paid a special bonus or increased wages to compensate Daugherty for his increased travel expenses incident to the temporary employment.

Practical advice for employers:

Employers should be practical and proactive regarding hiring of employees and sending employees out in the field. The following are some starting points, which should be tailored to specific situations:

1. Job offer letters and agreements should be in writing and explicitly state that employment is at-will.
2. Job offer letters should state the normal work hours and work location (and the employer's right to change them!).
3. Where it is known or likely that an employee may be commuting significant distance each day (over 100 miles round trip, or over 2 hours/day), it is worth mentioning that the employee is responsible for the costs of commuting, no portion of regular commuting costs will be paid by the employer, and that the employee will not be compensated for travel time.
4. When employees are required by their employer to travel to different worksites, ensure that pre-established employment policies address, at minimum: speed limits (whether or not it is as high as the state maximum); cell phone and mobile device usage; vehicle usage; coworker and other passengers, and other "rules of the road."

5. Employers should note that employees are not permitted to “frolic & detour” while traveling for work purposes. While a frolic & detour injury could be compensable under workers’ compensation, the employer may have grounds for disciplining the employee.

And as always, be sure to enforce work rules, no matter where the employee is located.