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LABOR AND INDUSTRIAL RELATIONS

Workers' Compensation: Grant Immunity to Businesses Using Services of a Temporary Help Contracting Firm or Employee Leasing Company

CODE SECTION: O.C.G.A. § 34-9-11 (amended)
BILL NUMBER: SB 331
ACT NUMBER: 272
GEORGIA LAWS: 1995 Ga. Laws 352
SUMMARY: The Act grants businesses the tort immunity provided to employers under the Workers' Compensation Act when the business uses the services of a temporary help contracting firm or an employee leasing company. The Act provides that temporary help contracting firms and employee leasing companies are statutory employers for the purpose of workers' compensation benefits.
EFFECTIVE DATE: April 7, 1995¹

History

Georgia law grants tort immunity to employers because they are strictly liable to an employee injured in the workplace for workers' compensation benefits.² This immunity extends to third party tortfeasors when the third party is either "an employee of the same employer or any person who, pursuant to a contract or agreement with an employer, provides workers' compensation benefits to an injured employee."³ Code section 34-9-8(a) also specifies that a principal, intermediate, or subcontractor is secondarily liable to injured employees of subcontractors for

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1. The Act became effective upon approval by the Governor.
 2. 1990 Ga. Laws 1164 (codified at O.C.G.A. § 34-9-11(a) (1992)). *See generally* O.C.G.A. §§ 34-9-1 to -421 (1992 & Supp. 1995).
 3. 1990 Ga. Laws 1164, § 1, at 1165 (codified at O.C.G.A. § 34-9-11(a) (1992)).

workers' compensation benefits "to the same extent as the immediate employer."⁴

In 1984, the Georgia Supreme Court held that owners who merely possessed or were in control of the premises were not statutory employers and, therefore, were not liable for workers' compensation benefits to injured employees.⁵ The court provided for one exception: when the owner "also serves as a contractor for yet another entity and hires another contractor to perform the work on the premises."⁶ In 1987, in *Wright v. M.D. Hodges Enterprises*,⁷ the Georgia Court of Appeals interpreted this exception to mean that if an "owner is not 'merely in possession or control of the premises' but is actively involved in the enterprise in which the employee was injured, then the circumstances of the particular case should determine whether the owner is a statutory employer of the injured employee."⁸ In *Wright*, the court held that an owner could serve as his own general contractor.⁹ This created the so-called "enterprise theory" under which an owner is liable for workers' compensation benefits and immune from tort liability.¹⁰

However, on September 13, 1993, the Georgia Supreme Court in *Yoho v. Ringier of America, Inc.*¹¹ decided that the "enterprise theory" was inconsistent with the Code.¹² The court began its analysis by noting that Code section 34-9-8(a) makes a principal contractor or subcontractor secondarily liable for an injured employee's workers' compensation benefits.¹³ Next, the court reasoned that under Code section 34-9-11 an entity must be secondarily liable for workers' compensation benefits in order to be immune from tort liability.¹⁴ The court found that under

4. 1920 Ga. Laws 167, § 20, at 179 (codified at O.C.G.A. § 34-9-8 (1992)).

5. *Manning v. Georgia Power Co.*, 314 S.E.2d 432, 434 (Ga. 1984).

6. *Id.* (quoting *Modlin v. Black & Decker Mfg. Co.*, 317 S.E.2d 255, 257 (Ga. Ct. App. 1984)).

7. 359 S.E.2d 700 (Ga. Ct. App. 1987).

8. *Id.* at 701.

9. *Id.*

10. *Id.* at 701-02. The term "enterprise theory" was used by the Georgia Supreme Court in *Yoho v. Ringier of America, Inc.*, 434 S.E.2d 57, 58 (Ga. 1993).

11. 434 S.E.2d 57 (Ga. 1993).

12. *Id.* at 60.

13. *Id.* at 59.

14. *Id.*

prior caselaw only “contractors” were held to be secondarily liable.¹⁵ Then, the court concluded that an owner is not a contractor merely because the owner is involved in the enterprise.¹⁶ Thus, the court overruled a line of cases¹⁷ that held noncontractor owners liable in certain circumstances for workers’ compensation benefits and immune from tort liability.¹⁸ This decision created the possibility that businesses using the services of temporary help contracting firms or employee leasing companies could be exposed to tort claims from temporary employees injured at their place of business because they would not be deemed statutory employers under the *Yoho* analysis.¹⁹

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The Act amends the general provisions of the Workers’ Compensation Act by adding subsection (c) to Code section 34-9-11.²⁰ The Act extends to businesses using the services of a temporary help contracting firm²¹ or an employee leasing company²² the same tort immunity that is given to employers under chapter 9.²³ This immunity exists when the workers’ compensation benefits are provided by either: (1) a temporary help contracting firm or an employee leasing company; or (2) a business using the services of either such firm or company.²⁴

15. *Id.*

16. *Id.*

17. *Id.* The Georgia Supreme Court listed the following cases as “disapproved”: *Falagan v. Georgia Power Co.*, 422 S.E.2d 563 (Ga. Ct. App. 1992); *Travelers Ins. Co. v. McNabb*, 410 S.E.2d 788 (Ga. Ct. App. 1991); *Fennell v. Max Rittenbaum, Inc.*, 405 S.E.2d 546 (Ga. Ct. App. 1991); *Winn-Dixie Atlanta, Inc. v. Couch*, 387 S.E.2d 590 (Ga. Ct. App. 1989); *Whitehead v. CHP, Ltd.*, 385 S.E.2d 124 (Ga. Ct. App. 1989); *Wright v. M.D. Hodges Enters., Inc.*, 359 S.E.2d 700 (Ga. Ct. App. 1987). *Yoho*, 434 S.E.2d at 60 & n.1. Furthermore, the court stated that the list was “non-inclusive.” *Id.* at 60 n.1.

18. *Id.* at 60.

19. Telephone Interview with Gould Hagler, Director of Governmental Affairs, Independent Insurance Agents of Georgia (Apr. 27, 1995).

20. O.C.G.A. § 34-9-11(c) (Supp. 1995).

21. *See* 1991 Ga. Laws 139, § 1, at 164 (codified at O.C.G.A. § 34-8-46 (1992) (defining “temporary help contracting firm”).

22. *See* 1991 Ga. Laws 139, § 1, at 143 (codified at O.C.G.A. § 34-8-32 (1992) (defining “employee leasing company”).

23. O.C.G.A. § 34-9-11(c) (Supp. 1995).

24. *Id.*

Additionally, the Act provides that temporary help contracting firms and employee leasing companies are the statutory employers for purposes of chapter 9 of title 34, making them primarily liable for workers' compensation benefits.²⁵

According to Senator Mark Taylor, one of the bill's sponsors, the law needed clarification to ensure that temporary employees are covered by workers' compensation either by the temporary agency or leasing company or by the entity using the services of such firms.²⁶ Senator Taylor believed that the previous law was clear, but recent court decisions had changed how the law was interpreted.²⁷ The recent court decisions allowed for "double dipping"²⁸ by the employee.²⁹ More importantly, the recent decisions created the possibility that an employee might not recover from any source.³⁰ Senator Taylor stated that an employee's remedy should not be in the tort system, if at all possible, because of the need for prompt payment.³¹ Thus, the workers' compensation system should be the ultimate recourse for the employee injured on the job.³²

The original version of the bill differed in only one respect from the bill as passed.³³ The original bill referred to the businesses using the services of a temporary help contracting firm or an employee leasing company as "clients."³⁴ Senator Taylor stated that the term "client" has become a term of art with many ramifications and that the Insurance and Labor Committee thought that there could be a conflict regarding its interpretation.³⁵ The Committee changed the term "clients" to

25. *Id.* See generally *id.* §§ 34-9-1 to -421 (1992 & Supp. 1995).

26. Telephone Interview with Sen. Mark Taylor, Senate District No. 12 (Apr. 5, 1995) [hereinafter Taylor Interview].

27. *Id.*

28. *Id.* An employee could recover workers' compensation benefits from the temporary help contracting firm and sue the business using the services of the temporary help contracting firm under a tort theory. See *Dye v. Trussway, Inc.*, 438 S.E.2d 194 (Ga. Ct. App. 1993).

29. Taylor Interview, *supra* note 26.

30. Taylor Interview, *supra* note 26.

31. Taylor Interview, *supra* note 26.

32. Taylor Interview, *supra* note 26.

33. Compare SB 331, as introduced, 1995 Ga. Gen. Assem. with O.C.G.A. § 34-9-11(c) (Supp. 1995).

34. SB 331, as introduced, 1995 Ga. Gen. Assem.

35. Taylor Interview, *supra* note 26.

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the phrase “businesses using the services” to clarify the General Assembly’s intent.³⁶

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36. Taylor Interview, *supra* note 26.