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THE CHILD LABOR ACT AND THE WORKMEN'S COMPENSATION ACT OF ILLINOIS

What is the employer's liability for injuries to illegally employed minors? Is such liability covered by the standard Workmen's Compensation and Employer's Liability insurance policy?

GEORGE W. ANGERSTEIN

THERE are numerous reasons why this subject is one of increasing importance to employers, insurance companies, minors, their parents and the public generally. Some of these reasons are the national urgency for increased production, the very natural desire of all Americans, including minors under the age of sixteen years, to assist in the national aim of greater production to the extent of their ability, the need in some instances due to higher living costs that such minors engage in some gainful occupation so as to supplement the family income, a growing labor shortage, the over-taxed facilities of plant employment offices—all these and many other factors make inevitable the occurrence of violations of the Child Labor Law irrespective of the best and most careful of intentions.

Upon the happening of an injury to the illegally employed minor a number of perplexing questions arise, and while the necessary limits of this article do not permit an exhaustive review of all the various questions which confront employers and insurance companies, nor of all decisions dealing with such of the many problems as have been before the courts, nevertheless an attempt is made to call attention to some of the difficulties to be encountered and to certain

anomalies in the present laws which will require legislative action to clarify.

HISTORY OF CHILD LABOR LAW

The first law enacted in Illinois forbidding certain employment of children was enacted in 1877¹ as an added section to the Criminal Code of 1874.² The first Child Labor Law separate and distinct from the provisions of the Criminal Code was enacted in 1891.³ This first Child Labor Law was very meager, consisting of five short sections and was followed by the law of 1897.⁴ This Act contained nine sections, exclusive of one providing that all acts or parts of acts inconsistent therewith were thereby repealed, and regulated the employment of minors much more fully and completely than did the Act of 1891.

The Act of 1897 was followed by the Act of 1903,⁵ which contained fourteen sections, exclusive of the section expressly repealing the Act of 1891. The next legislation on this subject was the Act of 1917.⁶ This was followed by the Act of 1921,⁷ which as subsequently amended, is the present Child Labor Law of Illinois.

It is quite noticeable that as Illinois has expanded industrially and as its population has increased, the State's con-

¹ An Act to prevent and punish wrongs to children approved May 17, 1877; in force July 1, 1877. Laws 1877, p. 90. See *Morris v. Stanfield*, 81 Ill. App. 264 (1899), based on this early law and holding that every day's employment of minor under thirteen years of age who was injured on employer's revolving saw was a separate offense and also that "the purpose of this statute is clearly to prevent employment of children."

² An Act to revise the law in relation to criminal jurisprudence, approved March 27, 1874; in force July 1, 1874. Rev. Stat. 1874, p. 348.

³ An Act to prevent Child Labor, approved June 17, 1891; in force July 1, 1891.

⁴ An Act to regulate the employment of children in the State of Illinois and to provide for the enforcement thereof, approved June 9, 1897; in force July 1, 1897.

⁵ An Act to regulate the employment of children in the State of Illinois, and to provide for the enforcement thereof, approved May 15, 1903; in force July 1, 1903.

⁶ An Act concerning child labor and to repeal an Act entitled "An Act to regulate the employment of children in the State of Illinois, and to provide for the enforcement thereof, approved May 15, 1903, in force July 1, 1903," approved June 26, 1917; in force July 1, 1917.

⁷ An Act to amend An Act Concerning Child Labor and to repeal An Act entitled "An Act to regulate the employment of children in the State of Illinois, and to provide for the enforcement thereof, approved May 15, 1903, in force July 1, 1903," approved June 26, 1917; in force July 1, 1917.

cern for the welfare of its children has been increasingly alert and vigilant. In passing it may be stated that the constitutionality of the Illinois Child Labor Laws has been upheld on the ground that the State is vitally interested in the protection of the lives, persons, health, and morals of its future citizens and that the enactment of such laws for the protection of children is a proper exercise of the State's police powers.⁸

The Child Labor Law of Illinois makes provision for the imposition of penalties for violation of any of its provisions. It does not expressly declare that an employer who violates the act by employing a minor without complying with its terms shall be liable to an action for damages which the minor so employed may suffer by reason of his employment, nevertheless the Supreme Court of Illinois has held in numerous cases that the employer is so liable.⁹

Contributory negligence on the part of the illegally employed minor is no defense to the employer as the action is for the breach of a statutory duty and is not based upon negligence, and the rules in regard to negligence, contributory negligence, negligence of a fellow servant and assumed risk do not apply.¹⁰ Failure to require the production by the minor of an age and school certificate renders the employer liable in case the minor is injured because it is reasoned that if the employer had not employed the minor in violation of the statute he would not have received the injury complained

⁸ *Kowalczyk v. Swift & Co.*, 329 Ill. 308, 160 N.E. 588 (1928); *Rost v. F. H. Noble & Co.*, 316 Ill. 357, 147 N.E. 258 (1925); *Gill v. Boston Store of Chicago*, 337 Ill. 70, 168 N.E. 895 (1929); *Sturges & Burn Mfg. Co. v. Beauchamp*, 231 U. S. 320, 34 S.Ct. 60, 58 L.Ed. 245 (1913); affirming 250 Ill. 303, 95 N.E. 204 (1913).

⁹ *American Car Co. v. Armentraut*, 214 Ill. 509, 73 N.E. 766 (1905); *Strafford v. Republic Iron & Steel Co.*, 238 Ill. 371, 87 N.E. 358 (1909); *Rost v. Noble & Co.*, 316 Ill. 357, 147 N.E. 258 (1925); *Newton v. Illinois Oil Co.*, 316 Ill. 416, 147 N.E. 465 (1925); *Kowalczyk v. Swift & Co.*, 329 Ill. 308, 160 N.E. 588 (1928). This has long been the rule of law in Illinois. In an early case, *Terre Haute & I. R. Co. v. Voelker*, 129 Ill. 540, 555, 22 N.E. 20, 24 (1889), it was stated, "A statute commanding an act to be done, creates an absolute duty to perform such act, and the duty of performance does not depend upon and is not controlled by surrounding circumstances. Nonperformance of such statutory duty, resulting in injury to another, may therefore be pronounced to be negligence as a conclusion of law."

¹⁰ *Frorer v. Baker*, 137 Ill. App. 588 (1907); *American Car Co. v. Armentraut*, 214 Ill. 509, 73 N.E. 766 (1905); *Rost v. Noble & Co.*, 316 Ill. 357, 147 N.E. 258 (1925); *Gill v. Boston Store of Chicago*, 337 Ill. 70, 168 N.E. 895 (1929).

of, and his unlawful employment, therefore, may be regarded as the proximate cause of his injury.¹¹

Likewise, if the minor is illegally employed it makes no difference as regards the liability of the employer whether or not the minor furnished an age and school certificate or whether the machinery was or was not in good repair and properly inspected.¹²

It also has been held no defense to the employer that the illegally employed minor was injured by leaving the work he was employed and directed to do and engaging in work he was forbidden to perform. The employer is held bound to know that on account of the minor's tender years he is not capable of a proper appreciation of danger, and also that on account of his immaturity he is incapable of a proper comprehension of the necessity for obedience to orders, and the employer has the burden of protecting him against his own negligence while working for the employer.¹³

Even though the minor under sixteen years of age has advanced physical qualifications and gives every appearance of being more than sixteen years of age and represents himself so to be, it is no defense to the employer as the cause of action is for the violation of a statute, and the prohibition of employment of all children under sixteen years in the absence of a certificate of employment, is absolute, and all other evidence is immaterial.¹⁴

False statements by the minor as to his age or any misrepresentations in regard thereto do not estop the minor from maintaining his action, as it is held that a child under the prohibited age cannot by a false statement as to his age

¹¹ *Frorer v. Baker*, 137 Ill. App. 588 (1907). "The inhibition against the employment of children under sixteen and over fourteen years of age, unless there is first produced and placed on file the required age and school certificate, is just as imperative as the inhibition against the employment of children under sixteen years of age at work which may be considered dangerous to their lives and limbs. It is the employment under the circumstances specified that is prohibited by the statute and made unlawful. If the appellant corporation had not employed appellee in violation of the statute, appellee would not have received the injury complained of, and his unlawful employment, therefore, may not improperly be regarded, prima facie at least, as the proximate cause of his injury."

¹² *Kowalczyk v. Swift & Co.*, 329 Ill. 308, 160 N.E. 588 (1928).

¹³ *Strafford v. Republic Iron & Steel Co.*, 238 Ill. 371, 87 N.E. 358 (1909).

¹⁴ *Gill v. Boston Store of Chicago*, 337 Ill. 70, 168 N.E. 895 (1929).

make his employment in violation of the statute lawful and authorize the employer to do that which the statute in express terms says he shall not do. To so hold would be to hold that a child by his false statement, could, in effect, repeal the statute.¹⁵

Some of the cases herein previously referred to were decided prior to the enactment of the Workmen's Compensation Act of Illinois, and all of them were decided prior to the 1927 amendment to Sections 5, 7 and 8 of the Compensation Act. Prior to 1927 the second paragraph of Section 5 of the Compensation Act, in defining the term "employee" contained the words "who are legally permitted to work under the laws of this state" immediately following and qualifying the word, "minors."

The decisions in illegal employment of minor cases prior to 1927 and while such above quoted words remained in the Workmen's Compensation Act are interesting, and reference to them is necessary, as will later appear, for proper understanding of the present, and as yet unsolved, difficulties presented by the two laws.

CASES PRIOR TO 1927 AMENDMENT OF THE WORKMEN'S COMPENSATION ACT

In an early case, decided while the Workmen's Compensation Act was still elective and not compulsory, the lower court sustained the defendant's motion to dismiss the complaint on the ground that it had no jurisdiction as the minor's remedy was under the Workmen's Compensation Act. The Appellate Court reversed the lower court and remanded the case on the ground that while minors might be considered as having adopted the provisions of the Workmen's Compensation Act concerning work they were legally

¹⁵ *Beauchamp v. Sturges & Burn Co.*, 250 Ill. 303, 95 N.E. 204 (1913); *American Car Co. v. Armentraut*, 214 Ill. 509, 73 N.E. 766 (1905). It was held in *Swift & Co. v. Rennard*, 119 Ill. App. 173 (1905), that "The fact . . . that appellee [the minor] knew he was under the age of sixteen years, and concealed that fact from appellant [the employer], or that he falsely stated his age to appellant, would not relieve appellant from the duty to know nor the responsibility of not knowing that he was of legal age before employing him and exposing him to the perils absolutely prohibited by the statute enacted solely for the protection of children, thus legislatively declared to be incapable of protecting themselves."

permitted to perform they “. . . cannot be considered as having adopted it for the purpose of performing work which is prohibited by law; and, therefore, compensation for injuries which they receive while engaged in the unlawful work cannot be recovered under the provisions of such act.”¹⁶

Another early case held that an illegally employed minor might bring an action at law for damages even though the employer was operating under the Workmen's Compensation Act, the minor “. . . not being an employee legally permitted to work under Section 5 of the latter act.”¹⁷

It also was held that the Industrial Commission could not award compensation to an illegally employed minor for the reason that “the Workmen's Compensation Act does not apply to minors who are illegally employed.”¹⁸

Prior to the 1927 amendment to the Workmen's Compensation Act striking out the words “who are legally permitted to work under the laws of the State,” which immediately followed and qualified the word “minor” in the second paragraph of Section 5, it was consistently held by both the Appellate and Supreme Courts of Illinois that the Industrial Commission did not possess jurisdiction to award compensation for injuries to illegally employed minors. In fact, it was held in one case that even though the Commission made an award which was paid by the employer, the minor was not thereby later estopped to proceed against the employer in a common law suit for damages. The reasons assigned by the court for its decision were that the Workmen's Compensation Act applied only where the contract of hiring was a valid contract and that “It cannot be supposed that the legislature intended to make such contracts illegal, [by enactment of the Child Labor Act] and at the same time to give them all the force and effect of legal contracts, so far as civil liability for injuries to minors are concerned. To so hold would tend to encourage and not discourage the practice which the statute has declared illegal; for, in the event

¹⁶ *Lostutter v. Brown Shoe Co.*, 203 Ill. App. 517 (1916).

¹⁷ *Zurasky v. Handycap Company*, 210 Ill. App. 254 (1918).

¹⁸ *Messmer v. Industrial Board*, 282 Ill. 562, 118 N.E. 993 (1918); *Roszek v. Bauerle & Stark Co.*, 282 Ill. 557, 118 N.E. 991 (1918); *Moll v. Industrial Commission*, 288 Ill. 347, 123 N.E. 562 (1919).

of an injury, the employer would suffer no more in the case of an illegal than of a legal employment," and therefore, the court held that although the Industrial Commission clearly was without jurisdiction to make the award, nevertheless, the minor who had secured an award was not estopped from maintaining his common law action for damages.¹⁹

Although the courts of Illinois consistently held prior to the 1927 amendment to Section 5 of the Workmen's Compensation Act that the Industrial Commission did not possess jurisdiction to award compensation for injuries sustained by illegally employed minors, it was held that the Commission possessed jurisdiction to award compensation to a twelve-year-old caddy for injuries sustained on the premises of a golf club. The basis of the decision on the point of employment was that the work of the caddy was not in violation of the Child Labor Act. This case merely added emphasis to the courts' holdings that while the Industrial Commission had jurisdiction to award compensation for injuries to minors legally employed, it very definitely did not possess jurisdiction to award compensation for injuries sustained by a minor illegally employed.²⁰

At that point, at a time when the rights and liabilities of all parties were considered definitely established and settled, the legislature enacted the 1927 amendment to the Workmen's Compensation Act striking out of Section 5 (second paragraph) the words "who are legally permitted to work under the laws of this state" which immediately followed and qualified the word "minors." At the same time, 1927, the legislature amended Section 8 by adding a new paragraph, Paragraph (k), which added paragraph remains unchanged today and which increased fifty per centum the compensation payable under paragraphs (b), (c), (d), (e) and (f) of Section 8, for injuries sustained by illegally employed minors, and the new paragraph (k) also contained a provision that it should not be construed to repeal or amend the provisions of the Child Labor Act.

In addition to this added paragraph (k) increasing by

¹⁹ *McInness v. Wilson Printing Co.*, 258 Ill. App. 161 (1930).

²⁰ *Indian Hill Club v. Industrial Commission*, 309 Ill. 271, 140 N.E. 871 (1923).

fifty per centum the compensation payable for temporary, partial permanent, total permanent, specific disability and also for disfigurement, the legislature at the same time amended Section 7 by adding paragraph (i) providing for a fifty per centum increase of compensation payable as death benefits under paragraphs (a), (b), (c), (d) and (e) of Section 7 in cases where the deceased employee was under sixteen years of age at the time of the accident and was illegally employed.

Since the enactment of these 1927 amendments to Sections 5, 7 and 8 of the Workmen's Compensation Act, only one case has arisen involving their interpretation and application and for this and other reasons the case is of considerable interest and importance.

The plaintiff, an illegally employed minor, started a common law action for personal injuries and the defendant demurred to plaintiff's declaration. Plaintiff elected to stand by his declaration and upon judgment being entered for defendant, plaintiff appealed direct to the Supreme Court because the constitutionality of the amendments to Sections 5 and 8 was involved.

The court held that the public policy of a state when not fixed by the constitution was not unalterable and that paragraph (k) of Section 8 was a valid enactment which did not purport to repeal, and in fact did not repeal, the Child Labor Act or any part thereof, but on the contrary expressly stated an intention not to do so.

The court stated (p. 583):

The Child Labor law is wholly a penal law and is in nowise affected by the enactment of paragraph (k). The only effect that paragraph has with reference thereto is to transfer a remedy of a minor not given by the Child Labor law but accruing to a minor by reason of a violation thereof, from a suit in trespass for personal injuries to a claim for such injuries under the Workmen's Compensation Act. There is no vested right of one injured to any particular remedy, and a transfer of remedies is clearly within the scope of legislative enactment.

As to the contention that paragraph (k) of Section 8 was in conflict with Section 5 of the Workmen's Compensation Act for the reason that the term "employee" is restricted to

persons in the service of another under contracts of hire, express or implied, and that by paragraph (k) the term "employee" is applied to one under sixteen years of age who is illegally employed at the time of the injury, and that therefore in cases arising under paragraph (k), there could be no contract of hire, the court held that while a contract of hiring a minor in violation of the Child Labor law was an illegal contract, such contract was not absolutely void in all its aspects; that it had sufficient virility to fix the relation between plaintiff and defendant as that of master and servant. The court then concluded that the illegally employed minor's remedy was under the Workmen's Compensation Act and not by a suit at law and that the demurrer to the plaintiff's declaration had been properly sustained.²¹

The amendments of 1927 to the Workmen's Compensation Act, as interpreted and construed by the court in the *Landry v. Shinner* case, marked a complete change in the public policy of the State as regards the rights of illegally employed minors for personal injuries. It previously had been consistently held that such injuries were beyond the scope of the provisions of the Workmen's Compensation Act; that the Industrial Commission was without jurisdiction to award compensation for such injuries and therefore that the illegally employed minor's sole right was a common law action based upon a violation of the provisions of the Child Labor Act. After the 1927 amendments the situation was exactly reversed—the minor's sole right was under the Workmen's Compensation Act and he no longer could maintain a common law action.

As the court had stated in the *Landry v. Shinner* case, the only effect of paragraph (k) of Section 8 was to transfer a remedy from a suit in trespass for personal injuries to a claim for such injuries under the Workmen's Compensation Act, and that since there is no vested rights in any particular remedy, the transfer was clearly within the power of the legislature. With this interpretation and application of the new amendments the situation was satisfactorily clarified and the rights of the parties definitely established.

²¹ *Landry v. E. G. Shinner & Co., Inc.*, 344 Ill. 579, 176 N.E. 895 (1931).

THE 1931 AMENDMENT TO SECTION 6

Unfortunately, real, and thus far, lasting confusion was created by the 1931 amendment to Section 6 of the Workmen's Compensation Act.²² This amendment purports to give the illegally employed minor a choice of two remedies. He is permitted to proceed under the Compensation Act or he or his legal representative may file a rejection of his rights to the benefits under the Act and pursue his common law or statutory remedies for damages. It also should be noted that this amendment, in case of the minor's death, apparently would give the right to his beneficiaries either to collect compensation benefits as provided by the Act plus fifty percent additional,²³ or if such beneficiaries wished they could reject such benefits and sue for wrongful death.

WOULD THE MINOR HAVE TO REJECT WITHIN SIX MONTHS?

Although the 1931 amendment to Section 6 of the Workmen's Compensation Act requires the illegally employed minor to file with the Industrial Commission a rejection of his right to the benefits under the Act within six months after the time of the injury if he wishes to pursue his common law remedy for damages, the question arises, Would the courts

²² Section 6 of the Workmen's Compensation Act of Illinois (Ill. Rev. Stat. 1941, Ch. 48, § 143) is as follows, the 1931 amendment being the italicized portion:

"No common law or statutory right to recover damages for injury or death sustained by any employee while engaged in the line of his duty as such employee, other than the compensation herein provided, shall be available to any employee who is covered by the provisions of this Act, to any one wholly or partially dependent upon him, the legal representatives of his estate, or any one otherwise entitled to recover damages for such injury; provided, however, that in any action now pending or hereafter begun to enforce a common law or statutory right to recover damages for negligently causing the injury or death of any employee it shall not be necessary to allege in the declaration that either the employee or the employer or both were not governed by the provisions of this Act or of any similar act in force in this or any other state: *Provided, further, that any illegally employed minor or his legal representatives shall, except as hereinafter provided, have the right, within six months after the time of injury or death, to file with the commission a rejection of his right to the benefits under this Act, in which case such illegally employed minor or his legal representatives shall have the right to pursue his or their common law or statutory remedies to recover damages for such injury or death; and provided, further, that no payment of compensation under this Act shall be made to an illegally employed minor, or his legal representatives, unless such payment has first been approved by the commission or any member thereof, and if such payment has been so approved such payment shall be a bar to a subsequent rejection of the provisions of this Act.*"

²³ Paragraph (i) of Section 7 of the Workmen's Compensation Act, Ill. Rev. Stat. 1941, Ch. 48, § 144(i).

hold such six months' limitation binding upon the minor?

In *Walgreen Company v. Indiana Company*,²⁴ no claim was made on behalf of a minor until four years after the injury. The claim was based on the provisions of paragraph (h) of Section 8 of the 1919 Workmen's Compensation Act.²⁵ Section 24 at that time also provided that in cases of mental incapacity of the employee, notice had to be given within six months after the accident. In other words, the provisions of paragraph (h) of Section 8 of the 1919 Act provided for cases of "incompetency" of an injured employee and Section 24 made a provision for "mental incapacity" of the employee.

The court affirmed an award for compensation entered by the Industrial Commission and held that "the limitations of time provided by the Workmen's Compensation Act do not run against the rights of a minor so long as he is without a guardian."

Since the decision in the Walgreen case (filed October 28, 1926), by amendments, effective July 1, 1927, the word "mentally" was placed before the word "incompetent" in paragraph (h) of Section 8, and the provisions now in Section 24 as to cases of mental incapacity were added.²⁶

In view of the provisions of the Act prior to the decision in the Walgreen case and the amendments subsequent thereto, it would have seemed a reasonable construction that the periods of limitation as then or later provided by the Act ran against injured minor employees, unless they were also mental incompetents for the reason that while a minor is

²⁴ 323 Ill. 194, 153 N.E. 831, 48 A.L.R. 1199 (1926).

²⁵ Paragraph (h) of Section 8 of the 1919 Workmen's Compensation Act was as follows: "In case an injured employee shall be *incompetent* at the time when any right or privilege accrues to him under the provisions of this Act, a conservator or guardian may be appointed, pursuant to law, and may, on behalf of such *incompetent*, claim and exercise any such right or privilege with the same force and effect as if the employee himself had been *competent* and had claimed or exercised said right or privilege; and no limitations of time by this Act provided shall run so long as said *incompetent* employee is without a conservator or guardian." [Italics supplied.]

²⁶ Amendment (1927) to Section 24 of the Workmen's Compensation Act as to limitations in cases of mental incapacity is as follows:

" . . . In case of mental incapacity of the employee or any dependents of a deceased employee who may be entitled to compensation under the provisions of this Act, the limitations of time by this Act provided shall not begin to run against said mental incompetents until a conservator or guardian has been appointed. . . ." Ill. Rev. Stat. 1941, Ch. 48, § 161.

“incompetent” in a legal sense, yet he is not a “mental incompetent” as the term is applied to lunatics, idiots, or insane persons.

In a later case,²⁷ a minor was permitted to make claim and was awarded the unpaid balance of death benefits upon the remarriage of his mother over three years after the death of his father when the Industrial Commission had erroneously found that the mother was the sole dependent. The court distinguished between minors who are employees and minors who are dependents. However, the court stated that “it is the public policy of this State that courts should guard carefully the rights of minors and that a minor should not be precluded from enforcing his rights unless clearly debarred by some statute or constitutional provision,” and cites the Walgreen case with approval without mention of the 1927 amendments.

In a more recent case²⁸ the Appellate Court in discussing the provisions in Section 6 of the Workmen’s Compensation Act requiring the illegally employed minor, or his legal representative, to file with the Industrial Commission a rejection of his right within six months after the time of the injury or death, stated the minor “in order to be bound by its provisions must have knowledge that he is subject to the provisions that require him to file a rejection.” If, of course, the application of the six months’ time provision of Section 6 depended on whether or not the illegally employed minor had knowledge of such provision, then for all practical purposes the provision is of no significance whatever.

WHAT ARE THE LIMITATIONS AS REGARDS ILLEGALLY EMPLOYED MINORS?

Under these conditions, what is the period of time within which an illegally employed minor for whom no guardian has been appointed can bring an action against the employer before the Industrial Commission for compensation benefits

²⁷ *Waechter v. Industrial Commission*, 367 Ill. 256, 11 N.E. (2d) 378 (1937). For other cases as to the application of limitations as to minors and also cited in the Walgreen Co. case, see *McDonald v. City of Spring Valley*, 285 Ill. 52, 120 N.E. 476, 2 A.L.R. 1359 (1918); *Maskaliunas v. Chicago & Western Indiana R. Co.*, 318 Ill. 142, 149 N.E. 23 (1925).

²⁸ *Kijowski v. Times Publishing Corp.*, 298 Ill. App. 236, 18 N.E. (2d) 754 (1939), affirmed 372 Ill. 311, 23 N.E. (2d) 703 (1939).

under the Act for personal injuries? How long does he have to start a common law suit for damages for such injuries? Is such minor bound at all by the provision requiring him to file a rejection with the Industrial Commission within six months after the injury before he can pursue a common law or statutory remedy?

The Supreme Court²⁹ has noted a distinction in that the provision in the second paragraph of Section 5 that minors "who, for the purpose of this Act, shall be considered the same and have the same power to contract, receive payments and give quittances therefor as adult employees," applies only to minor employees, not to minor dependents. However, in the same case the court refers to the established rule of law in Illinois, "that a minor cannot commence or engage in a legal proceeding in his own name" and further that it was the public policy of this state that courts should guard carefully the rights of minors and that a minor should not be precluded except in case of clear statutory prohibition.

The provision in the second paragraph of Section 5 that minors shall have "power to contract, receive payments and give quittances therefor" in no way meets the situation. It is not a question of releasing a claim—it is a question of the time in which a minor can make a claim.

There certainly are no clear statutory or constitutional time limitations against such minor, and in their absence and in view of the decisions of the courts,³⁰ it very probably has to be assumed that, at least, until the appointment of a guardian there is no limit of time except the termination of the minor's infancy as regards, (1) his right to bring a claim for benefits under the Compensation Act, (2) his right to file a rejection with the Industrial Commission of his right to benefits under the Act so as to proceed at common law, or (3) his right to sue at common law for damages due to personal injury.

²⁹ *Waechter v. Industrial Commission*, 367 Ill. 256, 11 N.E. (2d) 378 (1937).

³⁰ In addition to the Illinois cases previously cited, see *Decker v. Pouvaillsmith Corporation*, 233 N.Y.S. 407 (1929).

WHAT ABOUT THE INSURANCE CARRIER?

Thus far the only liability arising out of the illegal employment of a minor which has been considered has been that of the employer.

What about the liability of the employer's workmen's compensation carrier? This is really a multiple question.

First—Is the insurance carrier liable for any compensation whatever where the claimant is a minor illegally employed by the assured?

Second—If the insurance carrier is liable for compensation is it liable only for the regular compensation benefits under the Act or is it liable for both the regular benefits and the fifty per centum penalty provided for in paragraph (k) of Section 8?

Third—Is the insurance carrier liable to indemnify the employer against the expenses of trial and the amount of any judgment which might be recovered by the illegally employed minor in a common law action against the employer in a case where the minor previously had filed with the Industrial Commission a rejection of his right to compensation?

Taking the first and second questions—Is the insurance carrier liable for compensation for injuries to an illegally employed minor and, if so, is it also liable for the fifty per centum penalty as provided in paragraph (k) of Section 8—reference must first be made to the provisions of paragraph 3 of Section 26 of the Workmen's Compensation Act, providing that if the method of guaranteeing compensation liability is by insurance, the employer shall "Insure his entire liability to pay such compensation in some insurance carrier authorized, licensed or permitted to do such insurance business in this state; all policies of such insurance carriers insuring the payment of compensation under this Act *shall cover all the employees and the entire compensation liability of the insured, and any provision in such policy, or in any endorsement attached thereto, attempting to limit or modify in any way, the liability of the insurance carriers issuing the same shall be wholly void. . . .*" [Italics supplied.]

Next is considered paragraph One (a) of the standard workmen's compensation and employer's liability policy. The company does hereby agree "to pay promptly to any person entitled thereto under the Workmen's Compensation Law and in the manner therein provided, the entire amount of any sum due. . . . It is agreed that all the provisions of each Workmen's Compensation Law covered hereby shall be and remain a part of this contract as fully and completely as if written herein, so far as they apply to compensation or other benefits for any personal injury or death covered by this policy, while this policy shall remain in force. . . ."

While criticism thereof is not germane to the discussion, the last quoted provision is surplusage and adds nothing to the meaning or scope of the policy. "A basic rule of the construction of contracts and a material part of every contract is that all laws in existence when the contract is made necessarily enter into and form a part of it as fully as if they were expressly referred to or incorporated into its terms. This principle embraces alike those which affect its validity, construction, discharge and enforcement."³¹ "The pure contractual rights arising out of an insurance policy are ordinarily determined by its provisions, but it is a basic rule of construction that all general legal principles affecting contracts enter by implication into and form a part of every contract as fully as if specifically expressed therein."³² Therefore, clearly, even though the policy did not so expressly provide, all the provisions of the Workmen's Compensation Act are a part of the policy.

Referring now to the above quoted provisions of Paragraph 3 of Section 26 of the Workmen's Compensation Act

³¹ Illinois Bankers Life Ass'n v. Collins, 341 Ill. 548, 173 N.E. 465 (1930); Armour Packing Co., v. United States, 153 F. 1, 14 L.R.A. (N.S.) 400 (1907); United States v. Quincy, 4 Wall. 535, 18 L.Ed. 403 (1867); Rees v. Watertown, 86 U.S. 107, 22 L.Ed. 72 (1874); Edwards v. Kearzey, 96 U.S. 595, 24 L.Ed. 793 (1878); Siebert v. United States, 122 U.S. 284, 7 S.Ct. 1190, 30 L.Ed. 1161 (1887). Contracts are presumed to have been entered into in the light of existing principles of law. Black & Yates, Inc. v. Negros-Philippine Lumber Co., 32 Wyo. 248, 231 P. 398 (1924). And the existing law is presumed to be a part of every contract. Farley v. Board of Education, 62 Okla. 181, 162 P. 797 (1917). And contracts should be so understood and construed unless otherwise clearly indicated by the terms of the agreement. Wilson v. Rousseau, 4 How. (U.S.) 646, 11 L.Ed. 1141 (1846).

³² 91 A.L.R. 1482, headnote 3, Insurance, § 169.

("All policies . . . shall cover all the employees and the entire compensation liability of the insured . . ."), it seems obvious that the first and second questions must be answered in the affirmative, that is, the insurance carrier, under the present standard form policy, is liable for compensation, including the fifty per centum increase, for injuries sustained by an illegally employed minor.

This would not be the conclusion if the policy exempted from coverage of paragraph One (a) persons employed in violation of law. The policy, however, nowhere makes such exemption as regards its liability under paragraph One (a). The company clearly and definitely agrees to pay "to any person entitled thereto under the Workmen's Compensation Law . . . the entire amount of any sum due," and as held by the Court in *Landry v. Shinner*,³³ compensation, plus a fifty per centum increase is payable under the Workmen's Compensation Act for injuries sustained by an illegally employed minor.

The court held in the *Landry v. Shinner* case that although the hiring of a minor in violation of the Child Labor Act was an illegal contract, yet such contract was not absolutely void; that it had sufficient virility to fix the relation of Master and Servant.

It seems the court, quite logically, might have reached a different conclusion. It could be argued that the public policy of this state as regards child labor was fixed and established many years before the enactment of the Workmen's Compensation Act. The Child Labor Act "was manifestly intended to prohibit the employment of a child between fourteen and sixteen years of age at work which it was physically unable to do and made the certificate of employment the only evidence of the child's ability to do the work."³⁴ To hold—and the court had to find—that the illegal contract of employment was a "contract of hire" within the meaning of Section 5 of the Workmen's Compensation Act, does not seem to tend to discourage the illegal employment of chil-

³³ 344 Ill. 579, 176 N.E. 895 (1931).

³⁴ *Gill v. Boston Store of Chicago*, 337 Ill. 70, 168 N.E. 895 (1929).

dren.³⁵ However, the court definitely did hold in the *Landry v. Shinner* case that the illegally employed minor was entitled to the benefits as provided in paragraph (k) of Section 8 of the Workmen's Compensation Act.

The provisions of the insurance carrier's agreement in paragraph (a) of the standard policy to pay "to any person entitled thereto" the compensation as provided by the provisions of the Act are so explicit and unqualified and are without any exception or exemption as to illegality of employment so that the insurance carrier's direct liability under its policy as regards compensation payable under all of the provisions of the Compensation Act, the fifty per centum increase as provided by paragraph (k) of Section 8, as well as the increase provided by paragraph (i) of Section 7, in case of the death of the illegally employed minor, appears to be self-evident.

If the present standard policy made an exception as to illegally employed minors an entirely different situation would be presented. In *Maryland Casualty Company v. State Industrial Accident Commission*,³⁶ an exception reading, "This policy shall cover such injuries . . . sustained by an

³⁵ In *Lincoln et al. v. National Tube Co.*, 268 Pa. 504, 112 A. 73 (1920), the court stated (p. 73): "Certain clauses in it furnish opportunity for a plausible argument to the contrary; but in terms it relates only to those employers who 'shall by agreement, either expressed or implied, . . . accept the provisions' thereof. Since no legal contract could be made by or for the minor to do this kind of work, and as such a contract could not be legally 'renewed or extended by mutual consent, expressed or implied,' it is clear the Workmen's Compensation Law does not cover the case; and this conclusion is rendered still further necessary by the fact that the two statutes were adopted at the same session of the Legislature, and, if possible, each must be given full effect without one infringing upon the domain of the other. . . . Our conclusion as above operates so to do.

"Moreover, it cannot be supposed the Legislature intended to make such contracts illegal, and at the same time to give them all the force and effect of legal contracts, so far as civil liability for injuries to minors is concerned. To so hold would tend to encourage and not discourage the practice which the statute has declared illegal; for, in the event of an injury, the employer would suffer no more in the case of an illegal than of a legal employment.

"In New Jersey and Iowa the same conclusion is reached on substantially similar provisions (*Hetzel v. Wasson Piston Ring Co.*, 89 N.J. Law 201, 98 A. 306, L.R.A. 1917D 75; *Secklich v. Harris-Ernery Co.*, 184 Iowa 1025, 169 N.W. 325), the statutes in the other states whose opinions are cited or quoted by counsel being so widely variant from ours as to make their decisions valueless as precedents here, though, partially from a different standpoint, they are in accord with the conclusion reached by us."

³⁶ 209 Cal. 394, 287 P. 468 (1930).

employee or employees *legally employed . . .*" was held valid even though the policy specifically covered the employer's liability under the California Compensation Act and the Compensation Act in defining the term employee included minors "whether lawfully or unlawfully employed."³⁷ In a later California case³⁸ injuries to night club hostesses employed in violation of law were held covered by a compensation policy of which the court stated "there was *nothing in the insurance contract which purported to limit the coverage.*"

Just as a matter of interest and in contrast to the California court's decision in the night club hostess case, the courts of New York³⁹ and New Jersey⁴⁰ have held injuries to bartenders sustained during the prohibition era were not compensable under workmen's compensation acts for the reason that their contract of employment required them to do acts constituting violations on their part of the express provisions of penal statutes, whereas only the employer violated a penal statute in the night club hostess case, which violation consisted of employing them in violation of the penal code.⁴¹

In concluding this phase of the discussion—the liability of the insurance carrier under the standard policy for compensation for injuries to illegally employed minors—the seemingly inescapable conclusion that the carrier is liable both for the regular compensation benefits, plus the fifty per centum increase, is all the more apparent by the provisions of Condition D of the policy that "the obligations of paragraph One (a) . . . are declared to be the direct obligations

³⁷ Workmen's Compensation Act of California, § 8 (a) (St. 1917, p. 835).

"Thus the policy is intended to cover all employees of the insured except those specifically excluded in the policy, to wit, those illegally employed. We can find no ambiguity in the policy." *Maryland Casualty Co. v. State Ind. Acc. Com.*, supra n. 36, 287 P. at p. 469.

³⁸ *Massachusetts Bonding & Ins. Co. v. Industrial Acc. Com.*, 19 Cal. App. (2d) 583, 65 P. (2d) 1349 (1937).

³⁹ *Herbold v. Neff*, 193 N.Y.S. 244 (1922); *Swihura v. Horowitz*, 212 N.Y.S. 926 (1925).

⁴⁰ *Snyder v. Morgan*, 9 N.J. Misc. 293, 154 A. 525 (1931).

⁴¹ Section 303 of the Penal Code provided that it should be unlawful "to employ upon the premises where the alcoholic beverages are sold any person for the purpose of procuring or encouraging the purchase or sale of such beverages, or to pay any person a percentage or commission on the sale of such beverages for procuring or encouraging such purchase or sale."

and promises of the company to any injured employee covered hereby. . . .” In fact, very careful analysis of the terms and provisions of the policy fails to disclose any expressed intention on the part of the company to make any exception of liability under the Workmen’s Compensation Act in regard to illegally employed minors.⁴²

IS THE INSURANCE CARRIER LIABLE WHERE THE ILLEGALLY EMPLOYED MINOR SUES AT COMMON LAW?

Having considered the liability of the insurance carrier under paragraph One (a) of the Standard Workmen’s Compensation and Employers’ Liability Policy as regards compensation benefits payable to an illegally employed minor, there remains the even more important question of the insurance carrier’s liability in cases where the illegally employed minor files with the Industrial Commission a rejection of his right to benefits and pursues his common-law remedy to recover damages for such injury.⁴³

It may be said in passing that the legislature by the 1931 Amendment to Section 6 gives to the illegally employed minors greater rights than are possessed by either legally employed minors or adults in that the former can choose between two remedies—the acceptance of benefits under the Act or suing at common law.

We now consider the common-law action. Is the insurance carrier under the standard policy liable to indemnify the employer against the expenses of trial and the amount of any judgment which might be recovered by the illegally employed minor in a common-law action against the employer in a case where the minor previously had filed with the

⁴² In *Ide v. Faul & Timmins*, 166 N.Y.S. 858 (1917), the court stated (p. 861) “Unquestionably as the appellants contend, the parties to an ordinary contract of indemnity may limit the insurer’s liability and exempt the insurer from any claim for indemnity to the insured against damages resulting from the violation by the insured of the Labor Law. *Mason-Henry Press v. Aetna Life Ins. Co.*, 211 N.Y. 489, 105 N.E. 326.

“In the case at bar no limitation of the contract of insurance in the respect suggested has been made and the same is clear and free of all ambiguity.”

⁴³ As previously pointed out by the provisions of the 1931 Amendment to Section 6 of the Workmen’s Compensation Act, the illegally employed minor can file a rejection of his rights under the Act and sue at common law.

Industrial Commission a rejection of his right to compensation?

Clearly and definitely the provisions of paragraph One (a) of the policy would have no application to such common law suit for the reason they deal solely with the employer's liability under the Workmen's Compensation Act. We turn, therefore, to the provisions of paragraph One (b). Under this paragraph the insurance company agrees "to indemnify the employer against loss by reason of the liability imposed upon him by law for damages on account of such injuries to such of said employees as *are legally employed* whenever such injuries may be sustained within the territorial limits of the United States of America or the Dominion of Canada. . . ."

It will at once be noted that the insurance carrier's liability under the provisions of paragraph One (b) is expressly limited to "such of said employees as are legally employed."

The liability of the insurance carrier under paragraph One (b) of the present standard policy, therefore, is very similar to that which existed under the old employer's indemnity policies prior to the enactment of Workmen's Compensation Acts.

In regard to provisions in such policies excepting liability in cases of illegally employed minors, the general rule was that such exceptions were valid.

In the majority of cases it seems to be held that any illegality or violation of law in the employment of a minor has effect to release the insurer from his liability under a provision in the employee's indemnity policy of insurance excepting liability in case of a person employed contrary to law as to age, or illegally employed, regardless of whether the violation was a material one or not.⁴⁴

The restriction in the present standard policy of the insurance carrier's liability under paragraph One (b) to "such of said employees as are legally employed" is clearly valid and binding upon the parties in accordance with the overwhelming weight of authority.⁴⁵ In *Mason-Henry Press*

⁴⁴ 59 A.L.R. 301.

⁴⁵ *Goodwillie et al. v. London Guarantee & Accident Co.*, 108 Wis. 207, 84 N.W. 164 (1900); *Kleeman Co. v. New Amsterdam Casualty Co.*, 177 Mo. App. 397, 164 S.W. 167 (1914); *Aetna Life Ins. Co. v. Tyler Box & Lumber Mfg. Co.*, 149 S.W. 283 (Tex. Civ. App., 1912); *Buffalo Steel Co. v. Aetna Life Ins. Co.*, 136 N.Y.S.

v. *Aetna Life Insurance Company*,⁴⁶ in which case the policy did not cover "loss or expense arising on account of, or resulting from injuries or death to, or if caused by any person employed in violation of law, the New York court stated (p. 827):

The parties, by their contract of indemnity or insurance had a right to place a limitation on the insurer's liability, and to exempt the latter from any claim for indemnity to the insured against damages resulting from the latter's violation of the Labor Law. They did not insert in the contract a clause thus limiting the liability of the insurer.

In *Zisko v. Travelers Insurance Company*,⁴⁷ the illegally employed minor recovered a judgment against the employer who in turn sued the insurance carrier. The New Jersey court stated (p. 391):

An infant illegally employed has a common law cause of action against his employer to recover for the injury sustained. . . . The defendant did not insure this risk, but did insure the liability of the employer to pay compensation to such employees as were legally employed and who met with accidents arising out of and in the course of their employment. To deny such carrier the rights arising from a disclaimer, such as was proved here, would result in the imposition of a liability not arising in the contract of the parties and completely at variance with their understanding. Such is not the law.

Without such exception in paragraph One (b) in the standard policy, the insurance carrier would be liable to indemnify the employer in cases where the illegally employed minor sued at common law. However, such exception is clearly expressed in paragraph One (b) and, therefore, the insurance carrier is not liable.⁴⁸

977 (1912); *United Waste Mfg. Co. v. Maryland Casualty Co.*, 148 N.Y.S. 852 (1914). Contrast *Edward Stern & Co. v. Liberty Mutual Ins. Co.*, 269 Pa. 559, 112 A. 865 (1921), where the insurer was held liable on the policy to the employer for injuries sustained by an illegally employed minor, where clause (b) of the policy did not exclude persons illegally employed. The court held that enforcement of the policy was not contrary to public policy. For an interesting case involving clause (b) of the Standard Workmen's Compensation policy see *Blanke-Baer Extract & P. Co. v. Ocean Accident & Guar. Corp.*, 96 S.W. (2d) 648 (Mo. App., 1936), where the minor originally was illegally employed but became of legal working age during the policy period and her injuries sustained after becoming of legal working age were held covered by clause One (b) of the Standard Workmen's Compensation & Employers' Liability Policy.

⁴⁶ 211 N.Y. 489, 105 N.E. 826 (1914).

⁴⁷ 117 N.J.L. 366, 189 A. 389 (1937).

⁴⁸ ". . . The majority of courts apparently are of the opinion that any illegality or violation of law in the employment of a minor effects a release of the insurer from his liability under a provision in an employer's indemnity policy of insur-

In concluding on the point of the insurance carrier's liability as to injuries sustained by illegally employed minors under the present standard policy, it is submitted that the insurance carrier is liable for compensation benefits, including the fifty per centum increase in cases where the illegally employed minor elects to proceed under the provisions of the Workmen's Compensation Act. On the other hand, it is submitted that when the illegally employed minor or his legal representative files with the Industrial Commission a rejection of his right to the benefits under the Compensation Act and elects to pursue his common-law or statutory remedy to recover damages, the insurance carrier is not liable under the standard policy to indemnify the employer either for expenses incurred in the defense of such action or for any judgment which might be obtained.

In conclusion, the urgent need for legislative action to clarify the Illinois situation is clearly indicated. The present complex situation is unfair to employers, insurance carriers and to employees. The measure and the time limitation of liability is uncertain as regards both the employer and the insurance carrier. Only the legislature can provide the remedy. Other states have found legislative action necessary to correct more or less similarly confused situations, and in this connection and without in anyway endorsing either plan, attention is called to the action of the Wisconsin and New York legislatures⁴⁹ which might well be found helpful in evolving amendments suitable to conditions and which would clarify the presently confused situation in Illinois.

ance excepting liability in case of a person employed contrary to law as to age or illegally employed, regardless of whether the violation was material or not. . . ." Couch, Insurance, § 1278, p. 4701.

⁴⁹ Wisconsin Statutes, § 102.62. The employer is made primarily liable and the insurance carrier is secondarily liable for the increased compensation payable under the Wisconsin Workmen's Compensation Act to minors who are employed in violation of the Child Labor Act.

New York Statutes, Ch. 67, § 142. The employer only is liable for the increased compensation payable to illegally employed minors; the insurance carrier is liable only for the regular amount of compensation.