



Notre Dame Law Review

Volume 21 | Issue 3

Article 2

3-1-1946

Liability of Subcontractors under Workmen's Compensation Laws

Lawrence Irwin Ferguson

Follow this and additional works at: <http://scholarship.law.nd.edu/ndlr>

 Part of the [Law Commons](#)

Recommended Citation

Lawrence I. Ferguson, *Liability of Subcontractors under Workmen's Compensation Laws*, 21 Notre Dame L. Rev. 155 (1946).

Available at: <http://scholarship.law.nd.edu/ndlr/vol21/iss3/2>

This Article is brought to you for free and open access by NDLScholarship. It has been accepted for inclusion in Notre Dame Law Review by an authorized administrator of NDLScholarship. For more information, please contact lawdr@nd.edu.

LIABILITY OF SUBCONTRACTORS UNDER WORKMEN'S COMPENSATION LAWS.

As a general rule,¹ in the absence of statute, the employees of a subcontractor are not entitled to compensation from the employer of such contractor for injuries under Workmen's Compensation Laws. Most states now have statutes, however, providing for such compensation and most of these statutes provide for a similar liability on the employer.

For this discussion we have selected states whose laws are representative: Indiana, Michigan, Illinois, New York, Massachusetts, Ohio, Wisconsin and Pennsylvania. Generally the law states that where a company is "doing business", even though all such business is done through subcontractors, the principal contractor is usually held liable for injuries to the employees of the subcontractor.

ANALYSIS BY STATES

Indiana—The statute provides that the principal contractor shall be liable unless he has required the subcontractor to furnish a certificate from the Industrial Board showing that such contractor has complied with the applicable sections of the act. The statute reads: "* * * Any principal contractor, intermediate contractor, or subcontractor who shall sublet the performance of any work, to a subcontractor subject to the compensation provision hereof, without requiring from such subcontractor a certificate from the industrial board showing that such subcontractor has complied with sections 5, 68, and 69 hereof, shall be liable to same extent as such subcontractor for the payment of compensation, physician's fees, hospital fees, nurse's charges, and burial expenses on account of the injury or death of any employee of such subcontractor due to an accident arising out of and in the course of the performance of the work covered by such subcontract.

“The state, any political subdivision thereof, any municipal corporation, any corporation, partnership, person, principal contractor, intermediate contractor, or subcontractor paying compensation, physician’s fees, hospital fees, nurse’s charges, or burial expenses, under the foregoing provisions of this section, may recover the amount paid from any person who, independently of such provisions, would have been liable for the payment thereof.” Burns’ Annotated Statutes, Sec. 40-1214.

Michigan—The statute makes the principal contractor liable if the subcontractor is not subject to the Workmen’s Compensation Act and does not become subject thereto prior to the date of the accidental injury or death for which the claim is made. The wording of this statute is:

“(a) Where any employer subject to the provisions of this act, (in this section referred to as the principal), contracts with any other person (in this section referred to as the contractor), who is not subject to this act and who does not become subject to this act prior to the date of the accidental injury or death for which claim is made for the execution by or under the contractor of the whole or part of any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under this act which he would have been liable to pay if that workman had been immediately employed by him, and when compensation is claimed from or proceedings are taken against the principal, the, in the application of this act, reference to principal shall be substituted for reference to the employer except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed: Provided that the term “contractor” shall be deemed to include subcontractors where the principal gives permission that the work or any part thereof be performed under subcontract;

Indemnification (b) When the principal is liable to pay compensation under this section, he shall be indemnified by the contractor or subcontractor as the case may be, but the employee shall not be entitled to recover at common law against the contractor or any other persons if he takes compensation from such principal. The principal in case he pays compensation to the employee of such contractor, may recover the amount so paid in an action against the contractor. (Callaghan's Michigan Statutes Annotated — Sec. 17,150)

Illinois—The Illinois act provides that the principal contractor shall be liable to pay compensation to the injured employees or the representatives of the killed employees of his subcontractor as independent contractor, unless such subcontractor or independent contractor has maintained insurance in an insurance company licensed to do business in Illinois.

Employers in Illinois subletting any part of their work to subcontractors should obtain a certificate from the subcontractor that he has complied with the act.

The Act says:

“Anyone engaging in any business or enterprise referred to subsections 1 and 2 of section 3 of the Act, who undertakes to do any of the work enumerated therein, shall be liable to pay compensation to his own immediate employees in accordance with the provisions of this act, and in addition thereto if he directly or indirectly contracts with any contractor, whether principal or subcontract to do any such work he shall be liable to pay any compensation to the employees of such contractor or subcontractor unless such contractor or subcontractor shall have insured, in any company or association authorized under the laws of the state to insure the liability to pay compensation under this act, or guaranteed his liability to pay such compensation.

“In the event any such person shall pay compensation under this section he may recover the amount thereof from the contractor or subcontractor, if any.

“This section shall not apply in any case where the accident occurs elsewhere than on, in or about the immediate premises on which the principal has contracted the work shall be done.” (Jones Annotated Statutes, Sec. 143.47)

For a complete exposition of the statute see *Baker & Conrad, Inc. v. Chicago Heights Construction Co.*, 364 Ill. 384, 4 N. E. (2d) 953.

New York—The New York statute makes the prime contractor liable where the subcontractor has failed to pay into the special fund set up by the Workmen’s Compensation Act. A provision added to the contract that the subcontractor shall make payments into the Workmen’s Compensation Fund as required by the laws of the State of New York will protect the prime contractor.

The New York statute provides:

“A contractor, the subject of whose contract is, involves or includes a hazardous employment, who subcontracts all or any part of such contract, shall, in the case of injury or death to any employee, arising out of and in the course of such hazardous employment, be liable for and pay compensation to such employee or persons entitled to compensation on the death of such employee, and in any such case of injury or death where employer of such employee would be required to make payments with special funds provided for by subdivision 8 and 9 of section 15 and subdivision 3 of section 25-a, the contractor, or if insured, his insurance carrier, shall be liable to pay into such special funds, the amounts required by such subdivisions 8 and 9 of section 15, and subdivision 3 of section 25-a to be paid by such employer; unless the subcontractor primarily liable for such compensation or payments into such special funds has secured compensation therefor, as provided in this chapter.” (Thompson’s Laws of New York — Workmen’s Compensation, Section 56).

Massachusetts—The Massachusetts statute provides that the owner or prime contractor shall be liable for injuries to employees of the independent contractor or subcontractor in cases where the independent contractor is not subject to the Workmen's Compensation Insurance Act and the owner or prime contractor is subject to the said act.

In view of this law, it is suggested that care be taken to choose independent contractors and subcontractors who are subject to the act and who will be likely to keep their insurance premiums paid up to date.

The Massachusetts act says:

"If an insured person enters into a contract, written or oral, with an independent contractor to do such person's work, or if such contractor enters into a contract with a subcontractor to do all or any part of the work comprised in such contract with the insured, and the insured would, if such work were executed by employees immediately employed by the insured, be liable to pay compensation under this chapter to those employees, the insurer shall pay to such employees any compensation which would be payable to them under this chapter if the independent or subcontractors were insured persons. . . ." (General Laws of Mass. 1932, Chapter 152, Sect. 18.)

Ohio—The Ohio act provides that the principal contractor shall be liable unless the subcontractor has made payments into the state fund or elected to pay compensation direct as provided in the act.

The following provision added to a contract by the prime contractor will furnish protection: "Subcontractor shall make all payments into the Workmen's Compensation fund required by the laws of the State of Ohio."

The statute is worded as follows:

"Every person in the service of any independent contractor or subcontractor who has failed to pay into the state in-

insurance fund the premium fixed by the industrial commission of Ohio for his employment or occupation, or to elect to pay compensation direct to his injured and to the dependents of his killed employees, as provided in section 1465-69 of the General Code shall be considered as the employee of the person who entered into contract, whether written or verbal with such independent contractor unless such employees, or their legal representatives or beneficiaries elect, after injury or death, to regard such independent contractor as the employer." (Throckmorton's Ohio Code Annotated 1936, Sec. 1465—6, Part 3.)

The word "person" as used in this section is defined to include private corporations.

The Wisconsin Act imposes a liability in cases where the subcontractor is not subject to the act, or has not complied with the insurance provisions thereof. An additional liability is also imposed in the case of loaned workmen, which I think might apply to the cases on which technical assistance is given.

A provision to protect the prime contractor should be included in all contracts to subcontractors. A clause of this kind will provide sufficient protection: "Subcontractor guarantees that he is subject to the Wisconsin Workmen's Compensation Act and that he has complied with the provisions of the subsection 21 of Section 102.28 of said Act. Subcontractor shall furnish proof to prime contractor of such compliance."

The statute follows:

"An employer shall be liable to an employee of a contractor or subcontractor under him who is not subject to this chapter or who has not complied with the provisions of subsection 2 of section 102.28 in any case where such employer would have been liable for compensation if such employee had been working directly for him. The contractor or subcontractor shall be liable for such compensation but the em-

ployee shall not recover compensation for the same injury from more than one party. In the same manner, under the same conditions, and with a like right of recovery as in the case of an employee of a contractor or subcontractor as described above, an employer shall also be liable for compensation to an employee loaned by him to another employer. The employer who shall become liable for and pay such compensation may recover the same from such contractor, subcontractor, or other employer, (whether or not such contractor, subcontractor, or other employer is an employer as defined in section 102.24) for whom the employee was working at the time of the accident. (Acts 1931, c. 403, Sec. 8, 102.06)

Pennsylvania provides protection for its workers as follows:

“An employer who permits the entry upon premises occupied by him or under his control of a laborer or an assistant hired by an employee or contractor, for the performance upon such premises of a part of the employer’s regular business entrusted to such employee or contractor, shall be liable to such laborer or assistant in the same manner and to the same extent as to his own employee.” (1915, June 2, P. L. 736, Art II, Sec. 202.)

Lawrence Irwin Ferguson.