STATE OF IDAHO

SURVEILLANCE

COMPENDIUM OF LAW

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Idaho's worker's compensation laws apply to all public and private employment not expressly exempted by statute. Idaho Code § 72-203. Subject to limited exceptions as stated in I.C. § 72-223 (relating to third party tort liability), Idaho's worker's compensation statutes provide the exclusive rights and remedies to employees injured by a workplace accident or occupational disease and provide the exclusive liability of employers to their employees. I.C. § 72-209; I.C. § 72-211. *See Gomez v. Crookham Company*, 2018 WL 6627599 (Idaho 2018).

Definition of Employer and Employee

"Employer" is defined as any person who has expressly or impliedly hired or contracted the services of another, including contractors and subcontractors. I.C. § 72-102(13)(a). "Employer" also includes the owner or lessee of premises, or other person who is virtually the proprietor or operator of the business conducted on the premises, but who, by reason of there being an independent contractor or for any other reason, is not the direct employer of the workers there employed. *Id*. Employers consist of private individuals and businesses as well as public entities, including the state, counties, and cities, their political subdivisions, and municipal corporations. I.C. §§ 72-204, -205.

Because worker's compensation laws provide the exclusive liability for employers where an employee is injured in a workplace accident or by an occupational disease, employers may seek to establish themselves as "statutory employers." A statutory employer is considered an "employer" for purposes of Idaho's worker's compensation laws.

Idaho recognizes two categories of statutory employers. A category one statutory employer is one who contracts or subcontracts out services and is liable to pay worker's compensation benefits if the direct employer does not. A category two statutory employer is one that is an owner/lessee of the premises where the injury accident occurred, or who is virtually the proprietor or operator of the business there carried on, but who by reason of there being an independent contractor or for any other reason, is not the direct employer of the worker. *Venters v. Sorrento Delaware, Inc.*, 141 Idaho 245, 249, 108 P.3d 392, 396 (2005). *See also* I.C. §§ 72-216, - 223. When an entity seeks to be a category one statutory employer, courts look to the definition of "employer" as stated in I.C. § 72-102(13)(a). *Krinitt v. Idaho Department of Fish and Game*, 162 Idaho 425, 431, 398 P.3d 158, 164 (2017). *See also Ewing v. State, Dep't of Transp.*, 147 Idaho 305, 307, 208 P.3d 287, 289 (2009) ("an employer who makes use of a contractor's or subcontractor's employees qualifies as a category one statutory employer and is immune from suits in tort."). When an entity seeks to be a category two statutory employer, courts consider whether the work being done by the employee pertains to the business, trade, or occupation of the owner or proprietor and whether the business, trade, or occupation is being carried on by it for monetary gain. *Venters*, 141 Idaho at 249, 108 P.3d at 396. *See also Robison v. Bateman-Hall, Inc.*, 139 Idaho 207, 212, 76 P.3d 951, 956 (2003).

"Employee" means any person who has entered into the employment of, or who works under contract of service or apprenticeship with, an employer, subject to exceptions enumerated in I.C. § 72-212. Under I.C. § 72-212, "employee" does not include household domestic service providers, casual employees, outworkers, certain familial employees, owners of sole proprietorships, certain members of partnerships or limited liability companies, certain officers of corporations, certain pilots, real estate brokers and salesmen, certain employees of realtors, volunteer ski patrollers, officials of athletic contests involving certain schools, and employment for which a rule of liability for injury, occupational disease, or death is provided by the laws of the United States, unless the employer makes a voluntary election, pursuant to I.C. § 72-213, to provide coverage to the exempted employee.

Compensable Conditions

Generally, compensable conditions fall into two categories: injuries and occupational diseases.

"Injury" is defined as a "personal injury caused by an accident arising out of and in the course of any employment covered by the worker's compensation law." I.C. § 72-102(18)(a). "Injury" and "personal injury" include only those injuries caused by an accident that results in physical harm to the body, specifically excluding occupational diseases. I.C. § 72-102(18)(c). Nonoccupational diseases may be compensable if they result directly from an "injury." *Id*. An accident is "an unexpected, undesigned, and unlooked for mishap, or untoward event, connected with the industry in which it occurs, and which can be reasonably located as to time when and place where it occurred, causing an injury." I.C. § 72-102(18)(b).

Occupational diseases are those that exist due to a hazardous nature of employment and that are characteristic and peculiar to the trade, occupation, process, or employment. Psychological injuries, disorders or conditions do not constitute occupational disease unless conditions set forth in I.C. § 72-451 are met. I.C. § 72-102(22)(a). Occupational diseases are enumerated in I.C. § 72-438, and unenumerated occupational diseases may be compensable if they meet the definition of occupational disease under I.C. § 72-102(22)(a) and are not hazards common to the general public. I.C. § 72-438. An employer is not liable for any compensation unless the occupational disease is actually incurred in the employer's employment. I.C. § 72-439(1). There is no liability for nonacute occupational diseases unless the employee was exposed to the hazard of the disease for a period of sixty days for the same employer. I.C. § 72-439(2).

Under I.C. § 72-451, a psychological mishap or event may be considered a compensable accident if it results in physical injury, is readily recognized and identifiable as having occurred at work, and is the product of a sudden and extraordinary event. The accident and injury

must be the predominant cause as compared to all other causes, must exist in a "real and objective sense," must be based on a condition sufficient to constitute a diagnosis under the American Psychiatric Association diagnostic criteria, and must be shown by clear and convincing evidence to have arisen out of and in the course of the employment from an accident or occupational disease as defined by the worker's compensation statutes. *Id*. Under certain circumstances, post-traumatic stress injuries suffered by first responders, caused by an event arising out of and in the course of employment, can be a compensable injury or occupational disease regardless of whether there is a physical injury. I.C. § 72-451(4).

Excluded Injuries

No worker's compensation benefits shall be allowed for injuries proximately caused by an employee's willful intention to cause harm to himself or to others. I.C. § 72-208(1). Additionally, no worker's compensation benefits shall be paid if an employee's intoxication, due to use of alcohol or controlled substances, is a reasonable and substantial cause of an injury. However, if the employer provided the intoxicants or the employer allows the employee to continue to work with knowledge of the employee's intoxication, benefits may be paid. I.C. § 72-208(2). Controlled substances do not include those substances that are properly prescribed by a physician and used according to their instructions. I.C. § 72-208(3).